No. [redacted]191

GEORGE H. [redacted], PETITIONER,

vs.

CENTRE COUNTY BANKING COMPANY AND JOHN M. SHUGERT, BANKRUPTS

No. [redacted]192

FLORENCE F. DALE, PETITIONER,

vs.

CENTRE COUNTY BANKING COMPANY AND JOHN M. SHUGERT, BANKRUPTS

No. [redacted]193

ANDREW [redacted], PETITIONER,

vs.

CENTRE COUNTY BANKING COMPANY AND JOHN M. SHUGERT, BANKRUPTS

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITIONS FOR WRITS FILED OCTOBER 4, 1920

WRITS AND RETURNS FILED DECEMBER 31, 1920

(32,900, 32,901, 32,903)

(29,900, 29,901, 29,902)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1923

No. 590

GEORGE R. MEEK, PETITIONER,

vs.

CENTRE COUNTY BANKING COMPANY AND JOHN M. SHUGERT, BANKRUPTS

No. 591

FLORENCE F. DALE, PETITIONER,

vs.

CENTRE COUNTY BANKING COMPANY AND JOHN M. SHUGERT, BANKRUPTS

No. 592

ANDREW BREEZE, PETITIONER,

vs.

CENTRE COUNTY BANKING COMPANY AND JOHN M. SHUGERT, BANKRUPTS

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

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IN THE

District Court of the United States,

FOR THE MIDDLE DISTRICT OF PENNSYLVANIA.

In Bankruptcy. No. 4268.

In the Matter of

JOHN M. SHUGERT, LAVINIA CATHERINE HARRIS, DECEASED; GEORGE R. MEEK, MARY C. HARRIS, FLORENCE F. DALE AND ANDREW BREEZE, INDIVIDUALLY AND TRADING AS CENTRE COUNTY BANKING COMPANY,

Bankrupts.

DOCKET ENTRIES.

June 30, 1922. Petition and schedules filed by John M. Shugert, at 8.18 a. m.

July 11, 1922. Order to show cause.

Subpœna awarded returnable June 26, 1922, directing George R. Meek and Mary C. Harris, Bellefonte, Centre County, Pa., Florence F. Dale, of Hazleton, Luzerne County, Pa., and Andrew Breeze, of Downington, Chester County, Pa., to show cause why the prayer of the petition should not be granted.

July 25, 1922. Præcipe for appearance of R. L. Bigelow, Esq., counsel for Florence F. Dale.

July 26, 1922. Schedules of Mary C. Harris.
Subpœna returned served upon George R. Meek, Mary C. Harris, and Florence F. Dale, personally, and as to Andrew Breeze, writ returned N. E. I.

July 27, 1922. Answer of George R. Meek, denying that he is a member of the firm or partnership of the Centre County Banking Company.

July 29, 1922. Answer of Florence F. Dale, denying that she is a member of the partnership of Centre County Banking Company.

Aug. 1, 1922. Order referring the petition and answers to M. Ward Fleming, Esq., Referee.

Aug. 9, 1922. Petition for alias subpœna and for service on Andrew Breeze by publication, and Order for service by publication.

Aug. 9, 1922. Alias subpœna issued returnable August 24, 1922.
Copy of petition in bankruptcy and alias subpœna mailed Andrew Breeze at his last known place of abode, to wit, Downington, Pa.

Aug. 15, 1922. Copy of order of court for publication mailed Gettig and Bower, Bellefonte, Pa.

Aug. 17, 1922. Request for trial by jury.

Aug. 15, 1922. Alias subpœna and petition returned marked "unknown."

Aug. 23, 1922. Petition of George R. Meek, for rule to show cause why Subpœna in Bankruptcy issued against him should not be quashed and set aside, and

Order granting rule returnable August 28, 1922, at ten o'clock a. m. at Sunbury, Pa.

Petition of Florence F. Dale for rule to show cause why Subpœna in Bankruptcy issued against her should not be quashed and set aside, and

Order granting rule returnable August 28, 1922, at ten o'clock a. m. at Sunbury, Pa.

Aug. 26, 1922. Petitions (9) to amend signed by John M. Shugert.

Amended petitions (9) of John M. Shugert.

Answers (4) of John M. Shugert to petition of George R. Meek.

Answers (4) of John M. Shugert to petition of Florence F. Dale.

Replication to answer filed by Geo. R. Meek.

Replication to answer filed by Florence F. Dale.

Aug. 28, 1922. Petition to amend and acceptance of service thereon.

Sept. 15, 1922. Motion of Geo. R. Meek, raising questions of jurisdiction.

Sept. 15, 1922. Motion of Florence F. Dale, raising question of jurisdiction.

Order allowing amended petition to be filed.

Order. "The amendment to the original petition as now presented is allowed and the Clerk is directed to issue a subpœna as prayed for in the petition as amended."

Sept. 18, 1922. Subpœna issued returnable October 3, 1922.

Sept. 22, 1922. Subpœna, Schedules, Amended petition and Order mailed Andrew Breeze, Downington, Pa.

Sept. 26, 1922. Subpœna returned from Downington, Pa., marked, "not at Downington, Pa."

Oct. 3, 1922. Subpœna returned served upon George R. Meek and Florence Dale and acceptance of service by Mary C. Harris and as to Andrew Breeze, N. E. I.

Motion of Florence F. Dale to dismiss petition.

Oct. 4, 1922. Præcipe for appearance of Richard L. Bigelow, Attorney for Florence F. Dale.

Oct. 7, 1922. Proof of publication.

Oct. 13, 1922. Answer of John M. Shugert to petition of Geo. R. Meek, for rule to dismiss.

Answer of John M. Shugert to petition of Florence F. Dale for rule to dismiss.

Answer of John M. Shugert to petition of Andrew Breeze on motion to quash.

Acceptance of service of copies of answers of John M. Shugert, (3).

Oct. 20, 1922. Petition of Andrew Breeze to set aside service of subpœna and stay proceedings.

Motion of Geo. R. Meek to set aside service of subpœna and stay proceedings, and

Order dated Oct. 3, 1922, fixing hearing thereon Oct. 9th, 1922, at ten o'clock, a. m. and

Order denying the motion to dismiss.

Order denying the motion of Florence F. Dale to dismiss petition.

Petition for the appointment of a receiver.

Oct. 23, 1922. Order setting aside service upon Andrew Breeze and directing that an Alias subpœna be issued returnable Nov. 30, 1922, and if personal service cannot be had the same to be obtained by publication in the Keystone Gazette for two weeks, last publication to be made on or before Nov. 17, 1922.

Oct. 24, 1922. Order appointing Ivan Walker, Esq., of Bellefonte, Pa., Receiver, bond in the sum of $300,000.00 required.

Oct. 30, 1922. Bond of Ivan Walker, Receiver, in the sum of $300,000.00 and order of approval thereon.

Oct. 30, 1922. Alias Subpœna, Petition and schedules, Amended petition and order mailed Andrew Breeze, Downington, Pa., returned marked, "not at Downington."

Nov. 11, 1922. Proof of publication of service by publication on Andrew Breeze.

Nov. 21, 1922. Inventory of Receiver.

Nov. 22, 1922. Order appointing appraisers.

Nov. 29, 1922. Order dated October 9, 1922, allowing withdrawal of appearance of Richard L. Bigelow, counsel for Florence F. Dale.

Dec. 4, 1922. Motion of Andrew Breeze to dismiss petition for adjudication and

Dec. 8, 1922. Order denying motion. Exception noted.

IN THE DISTRICT COURT OF THE UNITED STATES, FOR THE MIDDLE DISTRICT OF PENNSYLVANIA.

IN BANKRUPTCY. No. .

In the Matter of the Centre County Banking Company, a Partnership and John M. Shugert, Individually,
Bankrupts.

DEBTOR'S PETITION.

To the Honorable Charles B. Witmer, Judge of the District Court of the United States for the Middle District of Pennsylvania:

Your petitioner, John M. Shugert, respectfully represents:

1. That he has filed a voluntary petition in bankruptcy for the Centre County Banking Company, a partnership, and for himself individually.

2. That your petitioner is without funds to pay the costs of filing said petition in bankruptcy, and that he cannot obtain the money with which to pay such fees.

Your petitioner therefore prays that he be permitted to proceed *in forma pauperis* as provided by the Act of Congress.

And as in duty bound he will ever pray.

Sworn and subscribed to before me this 29th day of June, A. D. 1922. } JNO. M. SHUGERT.

ELIZABETH C. BARNHART,
(Seal) *Notary Public.*
My commission expires February 19, 1925.

S. D. GETTIG,
Attorney for Petitioner,
Bellefonte, Pa.

IN THE DISTRICT COURT OF THE UNITED STATES, FOR THE MIDDLE DISTRICT OF PENNSYLVANIA.

IN BANKRUPTCY. No. .

In the Matter of the Centre County Banking Company, a Partnership and John M. Shugert, Individually,
Bankrupts.

DEBTOR'S PETITION.

To the Honorable Charles B. Witmer, Judge of the District Court of the United States for the Middle District of Pennsylvania:

The petition of JOHN M. SHUGERT of the Borough of Bellefonte, in the County of Centre, in said district, of the occupation of private banking, respectfully shows:

That your petitioner and George R. Meek, Mary C. Harris, Florence F. Dale, and Andrew Breeze, who survived Lavinia Catherine Harris, now deceased, also a partner in her lifetime, are and have been partners under the style of Centre County Banking Company, which partnership has had its principal place of business at the Borough of Bellefonte, in the County of Centre, in said district, for the greater portion of the six months immediately preceding the filing of this petition; and that said partnership is insolvent and owes debts in excess of one thousand dollars ($1000). That the said Lavinia Catherine Harris died on or about the tenth day of January, A. D. 1921, and her estate will be administered by the Orphans' Court of Centre County upon the filing of the account of John Blanchard and Sarah C. Brown, her executors.

That such partnership and your petitioner are willing to surrender its and his property for the bene-

fit of its and his creditors, respectively, except such as is exempt by law, and desire to obtain the benefits of the bankruptcy law of 1898, as amended.

That the said George R. Meek, whose residence is in the Borough of Bellefonte, in the County of Centre, in the Middle District of Pennsylvania, Mary C. Harris, whose residence is in the said borough and county, in said district, Florence F. Dale, whose residence is in the City of Hazleton, County of Luzerne, in the Middle District of Pennsylvania, and Andrew Breeze, whose residence is in the Borough of Dowingtown, County of Chester, in the Eastern District of Pennsylvania, have not offered to join in said petition nor is your petitioner informed of their intention in said matter; that said parties are neither wage earners nor persons engaged chiefly in farming or the tillage of the soil, and as individuals owe debts which they are unable to pay in full.

That the schedule hereto annnexed marked A, and verified by your petitioner's oath, contains a full and true statement of all the debts of said partnership, and (so far as it is possible to ascertain) the names and residences of its creditors, and such further statements concerning said debts as are required by said law.

That the schedule hereto annexed marked B, and verified by your petitioner's oath, contains an accurate inventory of all of the property of said partnership, both real and personal, and such further statements concerning said property as are required by said law.

That the schedule hereto annexed marked C, and verified by the oath of your petitioner contains a full and true statement of all of his individual debts, and (so far as it is possible to ascertain) the names and places of residence of his individual creditors, and such further statements concerning said debts as are required by said law.

That the schedule hereto annexed marked D, and verified by the oath of your petitioner contains an accurate inventory of all of his individual property, both real and personal, and such further statements concerning said property as is required by said law.

Wherefore, your petitioner prays that such partnership and your petitioner as an individual and surviving partner of Lavinia Catherine Harris, deceased, may be adjudged bankrupt within the purview of such bankruptcy law of 1898, as amended, and that service of this petition with a subpœna be made upon George R. Meek, Mary C. Harris, Florence F. Dale, and Andrew Breeze, such non-consenting partners, and that proceedings be had as are provided in said law and General Order VIII of the Supreme Court and as the Court may order.

JNO. M. SHUGERT,
Petitioner.

S. D. GETTIG,
Attorney for Petitioner,
Bellefonte, Pa.

UNITED STATES OF AMERICA,
MIDDLE DISTRICT OF PENNSYLVANIA, } *ss.:*

I, JOHN M. SHUGERT, the petitioning debtor mentioned and described in the foregoing petition, do hereby make solemn oath that the statements contained therein are true according to the best of my knowledge, information and belief.

Sworn and subscribed to before me this 29th day of June, 1922.

JNO. M. SHUGERT,
Petitioner.

ELIZABETH C. BARNHART,
(Seal) *Notary Public.*
My commission expires February 19, 1925.

IN THE DISTRICT COURT OF THE UNITED STATES, FOR THE MIDDLE DISTRICT OF PENNSYLVANIA.

IN BANKRUPTCY. No. 4268.

In the Matter of Centre County Banking Company, a Partnership, and John M. Shugert, Individually, Against Whom a Petition for Adjudication in Bankruptcy Has Been Filed.

SUBPŒNA TO ALLEGED BANKRUPT.

UNITED STATES OF AMERICA,
MIDDLE DISTRICT OF PENNSYLVANIA, } *ss.:*

To George R. Meek, Mary C. Harris, Florence F. Dale and Andrew Breeze, in said District,

GREETING:

For certain causes offered before the District Court of the United States of America within and for the Middle District of Pennsylvania, as a Court of Bankruptcy.

WE COMMAND AND STRICTLY ENJOIN YOU laying all other matters aside and notwithstanding any excuse, that you personally appear before our said District Court, to be holden at Scranton, in said district, on the twenty-sixth day of July, A. D. 1922, to answer a petition filed by John M. Shugert in our said court praying that you may be adjudged a bankrupt; and to do further and receive that which our said District Court shall consider in this behalf. And this you are in no wise to omit, under the pains and penalties of what may befall thereon.

WITNESS, the HONORABLE CHARLES B. WITMER, Judge of the said court, and the seal (Seal) thereof, at Scranton this eleventh day of July, A. D. 1922.

G. C. SCHEUER,
Clerk.

S. W. HOFFORD,
Deputy Clerk.

Now, to wit, July 17, 1922, served the within subpœna upon the within named George R. Meek and Mary C. Harris, personally and individually, by reading to and making known to each of them the contents of said writ and by handing to and leaving with George R. Meek and Mary C. Harris, personally and individually, a true and attested copy of the within writ, together with a copy of debtor's petition. Service was made upon Mary C. Harris at her home, East Linn Street, Bellefonte, County of Centre, and within the Middle District of Pennsylvania. Service was made upon George R. Meek in Fishing Creek Valley, County of Clinton, and within the Middle District of Pennsylvania.

So answers

JOHN H. GLASS,
U. S. Marshal.
By A. J. HERR,
Deputy U. S. Marshal.

MARSHAL'S RETURN.

Now, to wit, July 24, A. D. 1922, served the within subpœna on the within named Florence F. Dale, personally by reading to and making known the contents thereof and by leaving a true and attested copy of debtor's petition, with the said Florence F. Dale. Service was made in the City of Hazleton, County of Luzerne, and within the Middle District of Pennsylvania.

So answers

JOHN H. GLASS,
U. S. Marshal.
By GEORGE GREEN,
Deputy U. S. Marshal.

Now, to wit July 26, A. D. 1922, returned N. E. I. as to Andrew Breeze, who is not a resident of the Middle District of Pennsylvania.

So answers

JOHN H. GLASS,
U. S. Marshal.
By GEORGE GREEN,
Deputy U. S. Marshal.

Came to hand 2 o'clock P. M., Marshal's Docket No. 3379. P472-5.

JOHN H. GLASS,
U. S. Marshal.

IN THE DISTRICT COURT OF THE UNITED STATES, FOR THE MIDDLE DISTRICT OF PENNSYLVANIA.

IN BANKRUPTCY. No. 4268.

In the Matter of the Centre County Banking Company, a Partnership and John M. Shugert, Individually,
Bankrupts.

ANSWER OF GEORGE R. MEEK.
(Filed July 27, 1922.)

To the Honorable Charles B. Witmer, Judge of the District Court of the United States, for the Middle District of Pennsylvania:

In answer to the subpœna issued out of your Honorable Court and served upon George R. Meek the seventeenth day of July, 1922, the affiant, the said George R. Meek, would respectfully represent: That at the time the above-named John M. Shugert presented his petition in bankruptcy on behalf of the Centre County Banking Company, a partnership, and John M. Shugert, individually, and for a long time to wit, fifteen months and upwards prior to the date of the petition just above referred to, he, the said George R. Meek, was not a partner—nor had he the said George R. Meek any interest in the partnership known as the Centre County Banking Company.

That the averment in the said petition of John M. Shugert that the affiant, George R. Meek, was a co-partner in the partnership of the Centre County Banking Company is not true in fact.

That the said John M. Shugert had no right, power or authority in law either as a partner or in any other relationship to affect George R. Meek or bring him within the jurisdiction of your Honorable Court.

Your petitioner, the affiant, therefore prays your Honorable Court to make a decree in the premises that the affiant your petitioner, George R. Meek aforesaid, be found to be not a member of the partnership of the Centre County Banking Company, and for such reason not properly brought within the jurisdiction of your Honorable Court.

And he will ever pray, etc.

GEO. R. MEEK.

COMMONWEALTH OF PENNSYLVANIA,
COUNTY OF CENTRE, } *ss.:*

Before me, a notary public in and for the said State and county, personally came George R. Meek, the above-named petitioning respondent, who being duly sworn according to law says that the facts set forth in the aforegoing answer are true and correct, and further saith not.

Sworn and subscribed to before me this 21st day of day of July, A. D. 1922. } GEO. R. MEEK.

BELLE WEAVER,
(Seal) *Notary Public.*

My commission expires February 19, 1925.

IN THE DISTRICT COURT OF THE UNITED STATES, FOR THE MIDDLE DISTRICT OF PENNSYLVANIA.

IN BANKRUPTCY. No. 4268.

In the Matter of Centre County Banking Company, a Partnership, and John M. Shugert, Individually, Against Whom a Petition for Adjudication in Bankruptcy Has Been Filed.

ANSWER TO PETITION OF CENTRE COUNTY BANKING COMPANY, BY FLORENCE F. DALE.

(Filed July 29, 1922.)

STATE OF PENNSYLVANIA, COUNTY OF LUZERNE, } *ss.:*

Personally appeared before me a notary public in and for the above-named State and county, Florence F. Dale, who being duly sworn according to law, doth depose and say:

1. That she is a resident of the City of Hazleton, County of Luzerne, and State of Pennsylvania, residing therein at No. 527 North James Street;

2. That she is not now, and never was, with her consent, or within her knowledge, a member of, or a partner in, the above-named Centre County Banking Company;

3. That she knows nothing about the affairs of said Centre County Banking Company and has never in any way, manner or form, been consulted about its affairs, and further saith not.

Sworn and subscribed before me this 28th day of July, A. D. 1922. } FLORENCE F. DALE.

JANE M. GORMAN,
(Seal) *Notary Public.*
Commission expires February 11, 1925.

IN THE DISTRICT COURT OF THE UNITED STATES, FOR THE MIDDLE DISTRICT OF PENNSYLVANIA.

IN BANKRUPTCY. No. 4268.

In the Matter of the Centre County Banking Company, a Partnership, and John M. Shugert, Individually,
Bankrupts.

PETITION OF GEORGE R. MEEK.
(Filed August 23, 1922.)

To the Honorable Charles B. Witmer, District Judge:

The petition of George R. Meek respectfully represents:

1. That a voluntary petition in bankruptcy executed by John M. Shugert, was filed in your Honorable Court on the day of July, 1922, as appears by the record in No. 4268 in the bankruptcy docket, in which petition it is set forth by the said John M. Shugert that he and the said George R. Meek, Mary C. Harris, Florence F. Dale and Andrew Breeze are partners, doing business under the style or name of Centre County Banking Company, which partnership has its principal place of business in the Borough of Bellefonte, in said district. It is further set forth in said petition that said partnership is willing to surrender its property for the benefit of its creditors, and that the said John M. Shugert, individually, is willing to surrender his property for the benefit of his creditors, and that the said partnership is insolvent.

2. The said John M. Shugert in said petition further prays that the partnership aforesaid and himself as an individual, shall be adjudicated a bankrupt within

the purview of the Bankruptcy Act of 1898 as amended, and further prays that service of his petition, together with a subpœna be made upon the said George R. Meek and other persons mentioned therein as partners as provided in general order No. 8 prescribed by the Supreme Court of the United States.

3. After said petition in bankruptcy was filed, to wit, on the eleventh day of July, 1922, and without any further petition or complaint having been filed against the said George R. Meek, the clerk of said Court issued a subpœna, under the seal of said Court, directed to the said George R. Meek, requiring him to appear and show cause on or before July 26, 1922, why he should not be adjudicated a bankrupt as provided by law, which subpœna was served upon your petitioner, together with a copy of the petition in bankruptcy filed therein.

4. Your petitioner thereafter filed an answer denying that he was a partner as set forth in said petition, and setting forth among other things therein that the said John M. Shugert had no right, power or authority in law as a partner or otherwise to bring him within the jurisdiction of your Honorable Court in said proceeding, and praying the Court to make an order decreeing that respondent had not properly been brought within the jurisdiction of your Honorable Court.

5. Thereafter an order was made by your Honor referring the petition in bankruptcy and the answer of your petitioner to M. Ward Fleming, Esq., as special master, to take the testimony upon the issue raised in said petition and answer concerning the question of fact as to whether the said George R. Meek is or was a partner in the Centre County Banking Company,

with direction to make findings of fact and conclusions of law and report the same to the Court. Pursuant to said order the said special master notified creditors and your petitioner to appear before him at the court house in Bellefonte on the seventeenth day of August, 1922, at 10 o'clock A. M., at which time testimony would be taken in said case.

6. That immediately after the said M. Ward Fleming had announced that he was present for the purpose of proceeding in the case, your petitioner presented a motion and filed the same with him challenging the jurisdiction of the Court as set forth therein, a copy of which said petition is hereto attached and made a part of this petition. Whereupon the said M. Ward Fleming announced that he would forward the said paper to your Honor for consideration and decision and adjourned said hearing until 10 o'clock A. M., August 28, 1922.

7. Your petitioner here again charges that your Honorable Court is without jurisdiction to issue a subpœna directed to your petitioner as was done in this case, requiring him to show cause why he should not be adjudicated a bankrupt upon the petition of the said John M. Shugert, for the reason that the Constitution and laws of the United States provide that your petitioner can only be adjudicated a bankrupt either upon his own voluntary petition or upon the petition of creditors as set forth therein, and your petitioner not having filed any voluntary petition in bankruptcy and no involuntary petition having been filed against him the Court is without jurisdiction to award or issue any subpœna directed against him.

8. Your petitioner further avers that under the Constitution and laws of the United States he is entitled to a trial by jury upon any proceeding at law

brought against him to determine the question whether or not he was a partner of the said John M. Shugert and others in the partnership known as the Centre County Banking Company, and he here asserts his right and demands that in any proceeding brought against him to determine that matter he shall have a trial by jury in a court having competent jurisdiction of his person and the subject matter of said suit, and he denies that the District Court of the United States for the Middle District of Pennsylvania has jurisdiction to hear and determine said question unless an action shall be brought against him by a citizen and resident of a State other than Pennsylvania or be brought for some cause or thing mentioned and described in the judicial code of the United States conferring jurisdiction upon the district courts to hear and determine causes.

9. While Congress in the Bankruptcy Act of 1898 as amended and as supplemented by the general orders prescribed by the Supreme Court of the United States may have provided for the issuance of a subpœna to a non-assenting partner to appear and show cause why the partnership should not be adjudicated a bankrupt, nevertheless Congress has not enacted any legislation conferring jurisdiction upon a court of bankruptcy to hear and determine by reference to a special master or otherwise an issue of fact as to whether a person named as a partner in a voluntary petition in bankruptcy filed by a person who admits he is a partner but where the allegation of partnership is denied by the person to whom a subpœna has been issued under the provisions of general order No. 8, prescribed by the Supreme Court of the United States and the provisions of the Bankruptcy Act of 1898 as amended and your petitioner avers that since by his answer in said proceed-

ing he has denied that he is or was a partner in the Centre County Banking Company at the time said petition in bankruptcy was filed, your Honorable Court is without jurisdiction to proceed further in said case against this petitioner or to hear and determine the question of fact as to whether he is or was a partner in the Centre County Banking Company upon the petition of the said John M. Shugert.

10. Your petitioner avers that in any proceeding brought in any court against him to determine the question of whether he is or was a partner in the Centre County Banking Company, jurisdiction can only be acquired by a summons or subpœna duly issued out of said court of competent jurisdiction, duly served upon the respondent and a cause of action set forth therein by a person, firm or corporation competent to sue, and no such proceeding having been brought against respondent of which your Honorable Court has jurisdiction, this Court should grant the prayer of the petitioner in this case and quash the subpœna issued against him.

Wherefore, your petitioner prays that a rule may be granted directing the said John M. Shugert, or any other party in interest, to appear and show cause why the subpœna in bankruptcy issued against your petitioner in said case should not be quashed and set aside, and an order be made setting aside the order of reference heretofore made to M. Ward Fleming as special master in said case, and for such other order or decree as to right and justice shall appertain.

GEO. R. MEEK.

MIDDLE DISTRICT OF PENNSYLVANIA, CENTRE COUNTY, } *ss.:*

George R. Meek, the petitioner above named, does hereby make solemn oath that the facts set forth in the foregoing petition are true.

Subscribed and sworn to before me this 17th day of August, 1922. } GEO. R. MEEK.

BELLE WEAVER,
(Seal) *Notary Public.*

My commission expires February 19, 1925.

IN THE DISTRICT COURT OF THE UNITED STATES, FOR THE MIDDLE DISTRICT OF PENNSYLVANIA.

IN BANKRUPTCY. No. 4268.

In the Matter of the Centre County Banking Company, a Partnership and John M. Shugert, Individually,

Bankrupts.

To M. Ward Fleming, Referee in Bankruptcy:

George R. Meek, by his counsel, Ellis L. Orvis, Harry Keller and M. C. Rhone, appear specially, and for the purpose only of filing this paper, before you this day, pursuant to notice dated August 3, 1922, that a hearing would be held before you in the above stated case pursuant to an order of reference made by the Honorable Charles B. Witmer, District Judge, which hearing is stated in said notice to be for the purpose of taking testimony upon an issue raised by petition and answer, upon which testimony you are to make a report to the Court, together with findings of fact and conclusions of law, and respectfully suggest:

1. That the District Court of the United States for the Middle District of Pennsylvania as set forth in the answer filed by the said George R. Meek has no jurisdiction, right, power, or authority to issue a subpœna directed to the said George R. Meek to show cause why he should not be adjudicated a bankrupt upon the voluntary petition filed by John M. Shugert, as set forth in a subpœna issued in this case, which said subpœna is hereto attached and made a part hereof.

2. The District Court of the United States for the Middle District of Pennsylvania is without jurisdiction to make any order of reference or to confer upon you as special master or otherwise, power and authority to take testimony and make a report to the Court, together with findings of fact and conclusions of law for the purpose of hearing or determining the question of whether the said George R. Meek is or was a partner of the said John M. Shugert, and said Court is without jurisdiction to issue any process directed to the said George R. Meek upon the petition in bankruptcy filed by the said John M. Shugert.

3. In any proceeding to determine the question of whether the said George R. Meek is or was a partner of the said John M. Shugert, the said George R. Meek is entitled under the Constitution and the laws of the United States to a trial by jury and he and now asserts this right and privilege conferred upon him by the Constitution and laws of the United States as a citizen thereof and denies the jurisdiction of the Court to proceed against him otherwise than by summons duly issued out of said Court, or by a subpœna founded upon a bill in equity duly filed in said court by a creditor or other claimant in a plenary proceeding.

4. There is no power or authority conferred upon the District Court of the United States for the Middle District of Pennsylvania to order or direct a subpœna in bankruptcy to be issued against the said George R. Meek founded upon a voluntary petition in bankruptcy filed by John M. Shugert, in which it is alleged that the said George R. Meek is a partner with him in the Centre County Banking Company.

5. There is no power, authority or jurisdiction conferred upon the District Court of the United States

for the Middle District of Pennsylvania to adjudicate the said George R. Meek a bankrupt upon the voluntary petition in bankruptcy of John M. Shugert, for the reason that under the Constitution and laws of the United States the said George R. Meek can only be adjudicated a bankrupt upon the petition of three or more creditors having provable debts against him amounting to five hundred dollars and alleging that the said George R. Meek owes debts in the sum of at least one thousand dollars and has committed one of the acts of bankruptcy set forth in the Bankruptcy Act of 1898 and the supplements thereto, or said petition allege that the creditors of the said George R. Meek were less than twelve in number, whereupon at least one creditor is required to file such petition unless the said George R. Meek himself shall file a voluntary petition therein, and the said George R. Meek not having filed any voluntary petition in bankruptcy in said court and no creditor having filed an involuntary petition in bankruptcy against him in said court, said Court is and was without jurisdiction to issue the subpœna issued in this case and without power or authority to make any order therein, except to quash the subpœna, and a motion is already prepared and will be presented by the said George R. Meek to the Judge of said court on Friday, August 18th, or as soon thereafter as counsel can be heard by said Judge.

6. The said M. Ward Fleming and the District Court of the United States are for other reasons without jurisdiction to hear and determine any of the matters and things mentioned or referred to in the notice above mentioned, or to hear and determine any of the things referred to in the subpœna issued in this case for other reasons which will be presented to the said Court.

Wherefore, counsel for the said George R. Meek, do present this their motion to you and respectfully suggest that the same be forwarded to the Hon. C. B. Witmer, District Judge for his consideration, and that no further proceedings be had before you until the question of jurisdiction raised in this paper shall be disposed of by the Court.

Respectfully submitted,

(Sgd.) ELLIS L. ORVIS,
HARRY KELLER,
M. C. RHONE.

August 22, 1922, rule granted as prayed for, returnable August 28, 1922, at 10 o'clock A. M., at Sunbury, Pennsylvania.

CHARLES B. WITMER,
District Judge.

IN THE DISTRICT COURT OF THE UNITED STATES, FOR THE MIDDLE DISTRICT OF PENNSYLVANIA.

IN BANKRUPTCY. No. 4268.

In the Matter of John M. Shugert, George R. Meek, Mary C. Harris, Florence F. Dale and Andrew Breeze, Surviving Partners of Lavina Catherine Harris, Deceased, Individually, and Trading as Centre County Banking Company,

Bankrupts.

ANSWER

OF JOHN M. SHUGERT TO PETITION OF GEORGE R. MEEK FOR RULE TO DISMISS THE PETITION IN BANKRUPTCY AND SET ASIDE THE SUBPŒNA ISSUED AGAINST HIM.

(Filed October 13, 1922.)

To the Honorable Charles B. Witmer, Judge of the District Court of the United States, for the Middle District of Pennsylvania:

The answer of John M. Shugert to the petition for a rule in the above stated case, respectfully represents:

First.—That it is not true, as set forth in paragraph one of the petition of the said George R. Meek, that your Honorable Court has no jurisdiction, right, power or authority to issue a subpœna in bankruptcy upon the voluntary petition filed by myself, but said Court has jurisdiction of said cause of action to require the said George R. Meek to show cause why he should not be declared a bankrupt, as a partner in the Centre County Banking Company.

Second.—That it is not true, as set forth in paragraph two of the petition of the said George R. Meek, that the said Court is without jurisdiction, right, power or authority to adjudicate him a bankrupt, upon the petition filed by me as amended.

Third.—That it is not true, as set forth in paragraph three of the petition of the said George R. Meek, that only an involuntary proceeding in bankruptcy can be instituted and maintained against him by the required number of creditors setting forth one or more acts of bankruptcy, neither is it true that the said Court is without jurisdiction to hear and determine the question of solvency or insolvency of the said George R. Meek or to adjudicate him a bankrupt upon the voluntary petition as amended, filed by me. Respondent further avers that it is not necessary nor mandatory under the Bankruptcy Act of 1898, and its amendments, that, where a voluntary petition is filed by one member of a partnership, on behalf of the said partnership, and the other members not joining, an act of bankruptcy should be alleged as to such non-joining members.

Fourth.—In answer to paragraph four of the petition of the said George R. Meek, this respondent avers that your Honorable Court on the fifteenth day of September, 1922, allowed the application to amend the original petition filed by me, which said amended petition, *inter alia*, prays that all members of said partnership be adjudged bankrupts, and that by the same order the subpœna theretofore issued was quashed by the said Court and a new subpœna directed to be issued in accordance with the amended petition. That said proceedings, after said amendment and the quashing of said subpœna, are proceedings *de novo*, as upon the original petition. That notice was ac-

cepted of the application to amend said petition, prior to the time that the same was filed in said Court, by counsel for the said George R. Meek, and no answer filed or objection made thereto.

Fifth.—Your respondent avers that the allegations contained in paragraph five of the petition of the said George R. Meek are not true, but that the business of said copartnership was continued after the death of Lavina Catherine Harris, evidently referred to in said paragraph, until the time that the business was suspended on May 13, 1922. That the said Court has ample authority, jurisdiction and power under the Bankruptcy Act of 1898, and its amendments to declare the surviving partners bankrupts.

Sixth.—That it is not true, as set forth in paragraph six of the petition of the said George R. Meek, that neither the Bankruptcy Act of 1898, nor any other law of the United States, confers power or authority upon one partner to file a petition in bankruptcy in the partnership name, for the purpose of having the partnership declared a bankrupt, where one or more of the remaning partners do not assent or consent thereto. Respondent avers that the said Bankruptcy Act does authorize a petition in bankruptcy to be filed by one partner, where all do not consent to join on behalf of the partnership and the individual members thereof, and that under the Bankruptcy Act, above referred to, and its amendments, the said Court is authorized to declare all of the members of such partnership, as well as the partnership itself, bankrupts.

Seventh.—Your respondent avers that the allegations set forth in paragraph seven of the petition of the said George R. Meek, are not true, but that General

Order Number Eight of the Supreme Court of the United States is an order defining the method of procedure in bankruptcy, duly promulgated by said Court under the powers conferred upon it, by the Bankruptcy Act of 1898 and its amendments, and is not in violation of the Constitution of the United States, and is not a denial of the equal protection of the laws of the United States, nor of the taking of property without due process of law. Respondent further avers that said order has the effect of law and is not in violation of any constitutional right, but provides a method for carrying into effect the said Bankruptcy Act.

Eighth.—That the allegations set forth in paragraph eight of the petition of the said George R. Meek are not true, but the said Court, as respondent is informed, has ample jurisdiction to declare all partners bankrupts upon the petition of one or more partners.

Ninth.—That the allegations set forth in paragraph nine do not apply to the copartnership of the Centre County Banking Company, and that it is not true that after the death of one partner, there was a dissolution as to the others, but that said partnership continued business until they were financially unable to do so any longer and were compelled to close their doors for the purpose of a settlement of said partnership affairs, as authorized by the Bankruptcy Act.

Tenth.—That your respondent denies the allegations of paragraph ten of the petition of the said George R. Meek, but avers that under the amended petition filed the said Court has ample jurisdiction to adjudicate the said George R. Meek, as well as all other surviving partners of the Centre County Banking Company, bankrupts.

WHEREFORE, this respondent prays your Honorable Court that the motion to dismiss the petition in bankruptcy, made by the said George R. Meek, and to set aside the subpœna issued under said amended petition, be dismissed at his costs.

JNO. M. SHUGERT.

STATE OF PENNSYLVANIA, }
COUNTY OF CENTRE, } *ss.:*

Before me, the undersigned, a notary public in and for said State and county, personally appeared JOHN M. SHUGERT, above named, who being duly sworn according to law, doth depose and say that the facts set forth in the foregoing answer are true and correct to the best of his knowledge, information and belief.

Sworn and subscribed before me this 12th day of October, A. D. 1922. } JNO. M. SHUGERT.

ELIZABETH C. WALKER,
(Seal) *Notary Public.*

My commission expires March 6, 1925.

IN THE DISTRICT COURT OF THE UNITED STATES, FOR THE MIDDLE DISTRICT OF PENNSYLVANIA.

IN BANKRUPTCY. No. 4268.

In the Matter of the Centre County Banking Company, a Partnership, and John M. Shugert, Individually, Bankrupts.

PETITION OF FLORENCE F. DALE.

(Filed August 23, 1922.)

To the Honorable Charles B. Witmer, District Judge:

The petition of Florence F. Dale respectfully represents:

1. That a voluntary petition in bankruptcy executed by John M. Shugert was filed in your Honorable Court on the day of July, 1922, as appears by the record in No. 4268 in the Bankruptcy Docket, in which petition it is set forth by the said John M. Shugert that he and the said Florence F. Dale, Mary C. Harris, George R. Meek and Andrew Breeze are partners, doing business under the style or name of Centre County Banking Company, which partnership has its principal place of business in the Borough of Bellefonte, in said district. It is further set forth in said petition that said partnership is willing to surrender its property for the benefit of its creditors, and that the said John M. Shugert, individually, is willing to surrender his property for the benefit of his creditors, and that the said partnership is insolvent.

2. The said John M. Shugert in said petition further prays that the partnership aforesaid and himself as an individual, shall be adjudicated a bankrupt

within the purview of the Bankruptcy Act of 1898 as amended, and further prays that service of his petition, together with a subpœna be made upon the said Florence F. Dale and other persons mentioned therein as partners as provided in General Order No. 8 prescribed by the Supreme Court of the United States.

3. After said petition in bankruptcy was filed, to wit, on the eleventh day of July, 1922, and without any further petition or complaint having been filed against the said Florence F. Dale, the clerk of said court issued a subpœna, under the seal of said court, directed to the said Florence F. Dale, requiring her to appear and show cause on or before July 26, 1922, why she should not be adjudicated a bankrupt as provided by law, which subpœna was served upon your petitioner, together with a copy of the petition in bankruptcy filed therein.

4. Your petitioner thereafter filed an answer denying that she was a partner as set forth in said petition, and setting forth among other things therein that the said John M. Shugert had no right, power or authority in law as a partner or otherwise to bring her within the jurisdiction of your Honorable Court in said proceeding, and praying the Court to make an order decreeing that respondent had not properly been brought within the jurisdiction of your Honorable Court.

5. Thereafter an order was made by your Honor referring the petition in bankruptcy and the answer of your petitioner to M. Ward Fleming, Esq., as special master, to take the testimony upon the issue raised in said petition and answer concerning the question of fact as to whether the said Florence F. Dale is or was a partner in the Centre County Banking Company,

with direction to make findings of fact and conclusions of law and report the same to the Court. Pursuant to said order the said special master notified creditors and your petitioner to appear before him at the Court House in Bellefonte on the seventeenth day of August, 1922, at 10 o'clock A. M., at which time testimony would be taken in said case.

6. That immediately after the said M. Ward Fleming had announced that he was present for the purpose of proceeding in the case, your petitioner presented a motion and filed the same with him challenging the jurisdiction of the Court as set forth therein, a copy of which petition is hereto attached and made a part of this petition. Whereupon the said M. Ward Fleming announced that he would forward the said paper to your Honor for consideration and decision and adjourned said hearing until 10 o'clock A. M., August 28, 1922.

7. Your petitioner here again charges that your Honorable Court is without jurisdiction to issue a subpœna directed to your petitioner as was done in this case, requiring her to show cause why she should not be adjudicated a bankrupt upon the petition of the said John M. Shugert, for the reason that the Constitution and laws of the United States provide that your petitioner can only be adjudicated a bankrupt either upon her own voluntary petition or upon the petition of creditors as set forth therein, and your petitioner not having filed any voluntary petition in bankruptcy and no involuntary petition having been filed against her the Court is without jurisdiction to award or issue any subpœna directed against her.

8. Your petitioner further avers that under the Constitution and laws of the United States she is entitled to a trial by jury upon any proceeding at law

brought against her to determine the question whether or not she was a partner of the said John M. Shugert and others in the partnership known as the Centre County Banking Company, and she here asserts her right and demands that in any proceeding brought against her to determine that matter she shall have a trial by jury in a court having competent jurisdiction of her person and the subject matter of said suit, and she denies that the District Court of the United States for the Middle District of Pennsylvania has jurisdiction to hear and determine said question unless an action shall be brought against her by a citizen and resident of a State other than Pennsylvania or be brought for some cause or thing mentioned and described in the judicial code of the United States conferring jurisdiction upon the district courts to hear and determine causes.

9. While Congress in the Bankruptcy Act of 1898 as amended and as supplemented by the general orders prescribed by the Supreme Court of the United States may have provided for the issuance of a subpœna to a non-assenting partner to appear and show cause why the partnership should not be adjudicated a bankrupt, nevertheless Congress has not enacted any legislation conferring jurisdiction upon a court of bankruptcy to hear and determine by reference to a special master or otherwise an issue of fact as to whether a person named as a partner in a voluntary petition in bankruptcy filed by a person who admits he is a partner but where the allegation of partnership is denied by the person to whom a subpœna has been issued under the provisions of General Order No. 8 prescribed by the Supreme Court of the United States and the provisions of the Bankruptcy Act of 1898 as amended; and your petitioner avers that since by her answer

in said proceeding she has denied that she is or was a partner in the Centre County Banking Company at the time said petition in bankruptcy was filed your Honorable Court is without jurisdiction to proceed further in said case against this petitioner or to hear and determine the question of fact as to whether she is or was a partner in the Centre County Banking Company upon the petition of the said John M. Shugert.

10. Your petitioner avers that in any proceeding brought in any court against her to determine the question of whether she is or was a partner in the Centre County Banking Company, jurisdiction can only be acquired by a summons or subpœna duly issued out of a court of competent jurisdiction, duly served upon the respondent and a cause of action set forth therein by a person, firm, or corporation competent to sue, and no such proceeding having been brought against respondent of which your Honorable Court has jurisdiction, this Court should grant the prayer of the petitioner in this case and quash the subpœna issued against her.

Wherefore, your petitioner prays that a rule may be granted directing the said John M. Shugert, or any other party in interest, to appear and show cause why the subpœna in bankruptcy issued against your petitioner in said case should not be quashed and set aside, and an order be made setting aside the order of reference heretofore made to M. Ward Fleming as special master in said case, and for such other order or decree as to right and justice shall appertain.

FLORENCE F. DALE,
By R. L. BIGELOW,
M. C. RHONE,
ELLIS L. ORVIS,
Her Counsel.

MIDDLE DISTRICT OF PENNSYLVANIA,
CENTRE COUNTY, } *ss.:*

Ellis L. Orvis, counsel for petitioner above named, being duly affirmed according to law, says that the facts set forth in the foregoing petition are true to the best of his knowledge and belief.

Affirmed and subscribed to before me this seventeenth day of August, 1922. } ELLIS L. ORVIS.

BELLE WEAVER,
(Seal) *Notary Public.*

My commission expires February 19, 1925.

IN THE DISTRICT COURT OF THE UNITED STATES, FOR THE MIDDLE DISTRICT OF PENNSYLVANIA.

IN BANKRUPTCY. No. 4268.

In the Matter of the Centre County Banking Company, a Partnership, and John M. Shugert, Individually,

Bankrupts.

To M. Ward Fleming, Referee in Bankruptcy:

Florence F. Dale, by her counsel, R. L. Bigelow, M. C. Rhone and Ellis L. Orvis, appear specially, and for the purpose only of filing this paper, before you this day, pursuant to notice dated August 3, 1922, that a hearing would be held before you in the above-stated case pursuant to an order of reference made by the Hon. Charles B. Witmer, District Judge, which hearing is stated in said notice to be for the purpose of taking testimony upon an issue raised by petition and answer, upon which testimony you are to make a report to the Court, together with findings of fact and conclusions of law, and respectfully suggest:

1. That the District Court of the United States for the Middle District of Pennsylvania as set forth in the answer filed by the said Florence F. Dale has no jurisdiction, right, power, or authority to issue a subpœna directed to the said Florence F. Dale to show cause why she should not be adjudicated a bankrupt upon the voluntary petition filed by John M. Shugert, as set forth in a subpœna issued in this case, which said subpœna is hereto attached and made a part hereof.

2. The District Court of the United States for the Middle District of Pennsylvania is without jurisdiction to make any order of reference or to confer

upon you as special master or otherwise, power and authority to take testimony and make a report to the Court, together with findings of fact and conclusions of law for the purpose of hearing or determining the question of whether the said Florence F. Dale is or was a partner of the said John M. Shugert, and said Court is without jurisdiction to issue any process directed to the said Florence F. Dale upon the petition in bankruptcy filed by the said John M. Shugert.

3. In any proceeding to determine the question of whether the said Florence F. Dale is or was a partner of the said John M. Shugert, the said Florence F. Dale is entitled under the Constitution and the laws of the United States to a trial by jury and she and now asserts this right and privilege conferred upon her by the Constitution and laws of the United States as a citizen thereof and denies the jurisdiction of the Court to proceed against her otherwise than by summons duly issued out of said court, or by a subpœna founded upon a bill in equity duly filed in said court by a creditor or other claimant in a plenary proceeding.

4. There is no power or authority conferred upon the District Court of the United States for the Middle District of Pennsylvania to order or direct a subpœna in bankruptcy to be issued against the said Florence F. Dale founded upon a voluntary petition in bankruptcy filed by John M. Shugert, in which it is alleged that the said Florence F. Dale is a partner with him in the Centre County Banking Company.

5. There is no power, authority or jurisdiction conferred upon the District Court of the United States for the Middle District of Pennsylvania to adjudicate the said Florence F. Dale a bankrupt upon the voluntary petition in bankruptcy of John M. Shugert, for

the reason that under the Constitution and laws of the United States the said Florence F. Dale can only be adjudicated a bankrupt upon the petition of three or more creditors having provable debts against her amounting to five hundred dollars and alleging that the said Florence F. Dale owes debts in the sum of at least one thousand dollars and has committed one of the acts of bankruptcy set forth in the Bankruptcy Act of 1898 and the supplements thereto, or said petition allege that the creditors of the said Florence F. Dale were less than twelve in number, whereupon at least one creditor is required to file such petition unless the said Florence F. Dale herself shall file a voluntary petition therein, and the said Florence F. Dale not having filed any voluntary petition in bankruptcy in said court and no creditor having filed an involuntary petition in bankruptcy against her in said court, said Court is and was without jurisdiction to issue the subpœna issued in this case and without power or authority to make any order therein, except to quash the subpœna, and a motion is already prepared and will be presented by the said Florence F. Dale to the Judge of said court on Friday, August 18th, or as soon thereafter as counsel can be heard by said Judge.

6. The said M. Ward Fleming and the District Court of the United States are for other reasons without jurisdiction to hear and determine any of the matters and things mentioned or referred to in the notice above mentioned, or to hear and determine any of the things referred to in the subpœna issued in this case for other reasons which will be presented to the said Court.

Wherefore, counsel for the said Florence F. Dale do present this their motion to you and respectfully

suggest that the same be forwarded to the Hon. C. B. Witmer, District Judge, for his consideration, and that no further proceedings be had before you until the question of jurisdiction raised in this paper shall be disposed of by the Court.

Respectfully submitted,

(Signed) R. L. BIGELOW,
M. C. RHONE,
ELLIS L. ORVIS.

August 22, 1922, rule granted as prayed for, returnable at Sunbury, Pennsylvania, Monday, August 28th, at 10 o'clock A. M.

CHARLES B. WITMER,
District Judge.

IN THE DISTRICT COURT OF THE UNITED STATES, FOR THE MIDDLE DISTRICT OF PENNSYLVANIA.

IN BANKRUPTCY. No. 4268.

In the Matter of John M. Shugert, George R. Meek, Mary C. Harris, Florence F. Dale and Andrew Breeze, Surviving Partners of Lavina Catherine Harris, Deceased, Individually, and Trading as Centre County Banking Company,

Bankrupts.

ANSWER

OF JOHN M. SHUGERT TO PETITION OF FLORENCE F. DALE FOR RULE TO DISMISS THE PETITION IN BANKRUPTCY AND SET ASIDE THE SUBPŒNA ISSUED AGAINST HER.

(Filed October 13, 1922.)

To the Honorable Charles B. Witmer, Judge of the District Court of the United States, for the Middle District of Pennsylvania:

The answer of JOHN M. SHUGERT to the petition for a rule in the above stated case, respectfully represents:

First.—That it is not true, as set forth in paragraph one of the petition of the said Florence F. Dale, that your Honorable Court has no jurisdiction, right, power or authority to issue a subpœna in bankruptcy upon the voluntary petition filed by myself, but said Court has jurisdiction of said cause of action to require the said Florence F. Dale to show cause why she should not be declared a bankrupt, as a partner in the Centre County Banking Company.

Second.—That it is not true, as set forth in paragraph two of the petition of the said Florence F. Dale, that the said Court is without jurisdiction, right, power or authority to adjudicate her a bankrupt, upon the petition filed by me as amended.

Third.—That it is not true, as set forth in paragraph three of the petition of the said Florence F. Dale, that only an involuntary proceeding in bankruptcy can be instituted and maintained against her by the required number of creditors setting forth one or more acts of bankruptcy, neither is it true that the said Court is without jurisdiction to hear and determine the question of solvency or insolvency of the said Florence F. Dale or to adjudicate her a bankrupt upon the voluntary petition as amended, filed by me. Respondent further avers that it is not necessary nor mandatory under the Bankruptcy Act of 1898 and its amendments, that, where a voluntary petition is filed by one member of a partnership, on behalf of the said partnership, and the other members not joining, an act of bankruptcy should be alleged as to such non-joining members.

Fourth.—In answer to paragraph four of the petition of the said Florence F. Dale, this respondent avers that your Honorable Court on the fifteenth day of September, 1922, allowed the application to amend the original petition filed by me, which said amended petition, *inter alia,* prays that all members of said partnership be adjudged bankrupts, and that by the same order the subpœna theretofore issued was quashed by the said Court and a new subpœna directed to be issued in accordance with the amended petition. That said proceedings, after said amendment and the quashing of said subpœna, are proceedings *de novo,* as upon the original petition. That notice was accepted of the

application to amend said petition, prior to the time that the same was filed in said court, by counsel for the said Florence F. Dale, and no answer filed or objection made thereto.

Fifth.—Your respondent avers that the allegations contained in paragraph five of the petition of the said Florence F. Dale are not true, but that the business of said copartnership was continued after the death of Lavina Catherine Harris, evidently referred to in said paragraph, until the time that the business was suspended on May 13, 1922. That the said Court has ample authority, jurisdiction and power under the Bankruptcy Act of 1898 and its amendments to declare the surviving partners bankrupts.

Sixth.—That it is not true, as set forth in paragraph six of the petition of the said Florence F. Dale, that neither the Bankruptcy Act of 1898, nor any other law of the United States, confers power or authority upon one partner to file a petition in bankruptcy in the partnership name, for the purpose of having the partnership declared a bankrupt, where one or more of the remaining partners do not assent or consent thereto. Respondent avers that the said Bankruptcy Act does authorize a petition in bankruptcy to be filed by one partner, where all do not consent to join on behalf of the partnership and the individual members thereof, and that under the Bankruptcy Act, above referred to, and its amendments, the said Court is authorized to declare all of the members of such partnership, as well as the partnership itself, bankrupts.

Seventh.—Your respondent avers that the allegations set forth in paragraph seven of the petition of the said Florence F. Dale, are not true, but that General Order Number Eight of the Supreme Court of the

United States is an order defining the method of procedure in bankruptcy, duly promulgated by said Court under the powers conferred upon it, by the Bankruptcy Act of 1898 and its amendments, and is not in violation of the Constitution of the United States, and is not a denial of the equal protection of the laws of the United States, nor of the taking of property without due process of law. Respondent further avers that said order has the effect of law and is not in violation of any constitutional right, but provides a method for putting into effect the said Bankruptcy Act.

Eighth.—That the allegations set forth in paragraph eight of the petition of the said Florence F. Dale are not true, but the said Court, as respondent is informed, has ample jurisdiction to declare all partners bankrupt upon the petition of one or more partners.

Ninth.—That the allegations set forth in paragraph nine do not apply to the copartnership of the Centre County Banking Company, and that it is not true that after the death of one partner, there was a dissolution as to the others, but that said partnership continued business until they were financially unable to do so any longer and were compelled to close their doors for the purpose of a settlement of said partnership affairs, as authorized by the Bankruptcy Act.

Tenth.—That your respondent denies the allegations of paragraph ten of the petition of the said Florence F. Dale, but avers that under the amended petition filed the said Court has ample jurisdiction to adjudicate the said Florence F. Dale, as well as all other surviving partners of the Centre County Banking Company, bankrupts.

WHEREFORE, this respondent prays your Honorable Court that the motion to dismiss the petition in bankruptcy, made by the said Florence F. Dale, and to set aside the subpœna issued under said amended petition, be dismissed at her costs.

JNO. M. SHUGERT.

STATE OF PENNSYLVANIA, }
COUNTY OF CENTRE, } *ss.:*

Before me, the undersigned, a notary public in and for said State and county, personally appeared JOHN M. SHUGERT, above named, who being duly sworn according to law, doth depose and say that the facts set forth in the foregoing answer are true and correct to the best of his knowledge, information and belief.

Sworn and subscribed before me this 12th day of October, A. D. 1922. } JNO. M. SHUGERT.

ELIZABETH C. WALKER,
(Seal) *Notary Public.*

My commission expires March 6, 1925.

IN THE DISTRICT COURT OF THE UNITED STATES, FOR THE MIDDLE DISTRICT OF PENNSYLVANIA.

IN BANKRUPTCY. No. 4268.

In the Matter of the Centre County Banking Company, a Partnership, and John M. Shugert, Individually,
Bankrupts.

PETITION TO AMEND.
(Filed August 26, 1922.)

To the Honorable Charles B. Witmer, Judge of the District Court of the United States, for the Middle District of Pennsylvania:

The petition of JOHN M. SHUGERT of the Borough of Bellefonte, County of Centre, in said district, of the occupation of private banking, respectfully shows:

That your petitioner on behalf of himself and the copartnership, doing business as the Centre County Banking Company, sometime the latter part of June, A. D. 1922, filed a petition in bankruptcy in the above stated court, to the number and term, hereinabove set forth. That your petitioner is desirous of amending said petition and the prayer thereof as follows:

FIRST AS TO SAID PETITION:

> "That there has been no final settlement of the partnership business of said partners, doing business as the Centre County Banking Company; and there are debts of said partnership, which are unsettled and unpaid, amounting to more than One Thousand Dollars. That each of said partners is insolvent and they are jointly or severally unable to pay said partnership debts."

SECOND AS TO THE PRAYER THEREOF:

"Wherefore, your petitioner prays that such partnership, as well as George R. Meek, Mary C. Harris, Florence F. Dale, Andrew Breeze, and your petitioner, surviving partners of Lavinia Catherine Harris, deceased, may each individually, as well as said firm, he adjudged bankrupt within the purview of such bankruptcy law of 1898, as amended, and that service of this petition with a subpœna, be made upon George R. Meek, Mary C. Harris, Florence F. Dale and Andrew Breeze, such non-consenting partners, and that proceedings be had as are provided in said law and General Order VIII of the Supreme Court, and as the Court may order."

Your petitioner further represents that his reason for praying the said Court to allow the foregoing amendment is based upon the fact that there is considerable diversity of opinion in the decisions of the Federal Courts as to the practice in filing petitions in bankruptcy, involving a partnership where all of the partners do not join. That your petitioner in the filing of the original petition followed what he believed was the practice in said district, as well as in many other district courts. That some of the decisions of various district courts, as your petitioner has since been informed, seemed to require a statement of facts and prayer, as hereinabove indicated. That your petitioner is advised by counsel that it is necessary that the foregoing amendments should be made to the original petition as filed.

That no previous application has been made for the order hereinafter asked.

WHEREFORE, your petitioner prays for an order amending said petition in the particulars above described, notice of which has been given to Harry Keller and Ellis L. Orvis, attorneys for George R. Meek and

Florence F. Dale, and notice of which is also accepted by S. D. Gettig, as attorney for Mary C. Harris. Your petitioner further prays that notice may be given to Andrew Breeze, as required by law.

Dated at Bellefonte, Pennsylvania, August 22, A. D. 1922.

JNO. M. SHUGERT,
Petitioner.

S. D. GETTIG,
Attorney for Petitioner,
Bellefonte, Pa.

UNITED STATES OF AMERICA,
MIDDLE DISTRICT OF PENNSYLVANIA, } *ss.:*

I, JOHN M. SHUGERT, the petitioning debtor mentioned and described in the foregoing petition, do hereby make solemn oath that the statements contained therein are true according to the best of my knowledge, information and belief. That he is without funds to pay the cost of filing this petition and that he can not obtain the money with which to pay such fees.

Sworn and subscribed before me this 22d day of August, A. D. 1922. } JNO. M. SHUGERT.
Petitioner.

ELIZABETH C. WALKER,
(Seal) *Notary Public.*

My commission expires March 6, 1925.

IN THE DISTRICT COURT OF THE UNITED STATES, FOR THE MIDDLE DISTRICT OF PENNSYLVANIA.

IN BANKRUPTCY. No. 4268.

In the Matter of the Centre County Banking Company, a Partnership, and John M. Shugert, Individually,

Bankrupts.

PETITION TO AMEND PETITION FOR ADJUDICATION AND ACCEPTANCE OF SERVICE THEREON.

(Filed August 28, 1922.)

To Orvis & Zerby and Harry Keller, Attorneys of Record for George R. Meek and Ellis L. Orvis, Attorney for Florence F. Dale:

Please take notice and you are hereby notified that a petition has this day been mailed to the clerk of the District Court of the United States, for the Middle District of Pennsylvania, by John M. Shugert, on behalf of himself and the copartnership, known as the Centre County Banking Company, to amend the original petition and prayer filed by him on behalf of himself and his partners in said banking company, and to which is attached a schedule of the assets and liabilities of said banking company, and of himself, individually, and which said amendment and prayer are as follows, to wit:

AMENDMENT TO PETITION.

"That there has been no final settlement of the partnership business of said partners, doing business as the Centre County Banking Company; and there are debts of said partnership, which are unsettled and unpaid, amounting to more than One

Thousand Dollars. That each of said partners is insolvent and they are jointly or severally unable to pay said partnership debts."

PRAYER TO PETITION.

"Wherefore, your petitioner prays that such partnership, as well as George R. Meek, Mary C. Harris, Florence F. Dale, Andrew Breeze, and your petitioner, surviving partners of Lavinia Catherine Harris, deceased, may each individually, as well as said firm, be adjudged bankrupt within the purview of such bankruptcy law of 1898, as amended, and that service of this petition, with a subpœna, be made upon George R. Meek, Mary C. Harris, Florence F. Dale and Andrew Breeze, such non-consenting partners, and that proceedings be had as are provided in said law and General Order VIII of the Supreme Court, and as the Court may order."

S. D. GETTIG,
Attorney for Petitioner.

August 22, 1922, I hereby accept notice of the above recited petition and waive further service thereof.

ELLIS L. ORVIS,
Attorney for Geo. R. Meek and Florence F. Dale.

HARRY KELLER,
Attorney for Geo. R. Meek.

IN THE DISTRICT COURT OF THE UNITED STATES, FOR THE MIDDLE DISTRICT OF PENNSYLVANIA.

IN BANKRUPTCY. No. 4268.

In the Matter of John M. Shugert, George R. Meek, Mary C. Harris, Florence F. Dale and Andrew Breeze, Surviving Partners of Lavina Catherine Harris, Deceased, Individually, and Trading as Centre County Banking Company,

Bankrupts.

ACCEPTANCE OF SERVICE.
(Filed October 13, 1922.)

And now, to wit, October 12, A. D. 1922, I hereby accept notice for George R. Meek of the filing of an answer to the petition of the said Meek for motion to dismiss the petition in bankruptcy filed in the above stated case, and set aside the subpœna issued in pursuance thereof.

HARRY KELLER,
M. C. RHONE,
ELLIS L. ORVIS,
Attorneys for George R. Meek.

IN THE DISTRICT COURT OF THE UNITED STATES, FOR THE MIDDLE DISTRICT OF PENNSYLVANIA.

IN BANKRUPTCY. No. 4268.

In the Matter of John M. Shugert, George R. Meek, Mary C. Harris, Florence F. Dale and Andrew Breeze, Surviving Partners of Lavina Catherine Harris, Deceased, Individually, and Trading as Centre County Banking Company,

Bankrupts.

ACCEPTANCE OF SERVICE.

(Filed October 13, 1922.)

And now, to wit, October 12, A. D. 1922, I hereby accept notice for Florence F. Dale of the filing of an answer to the petition of the said Dale for motion to dismiss the petition in bankruptcy filed in the above stated case, and set aside the subpœna issued in pursuance thereof.

M. C. RHONE,
R. L. BIGELOW,
ELLIS L. ORVIS,
Attorneys for Florence F. Dale.

IN THE DISTRICT COURT OF THE UNITED STATES, FOR THE MIDDLE DISTRICT OF PENNSYLVANIA.

IN BANKRUPTCY. No. 4268.

In the Matter of the Centre County Banking Company, a Partnership, and John M. Shugert, an Individual,

Bankrupts.

S. D. GETTIG, ESQ., Bellefonte, Penna., for John M. Shugert and Mary C. Harris;

N. B. SPANGLER, ESQ., Bellefonte, Penna., for Depositors' Committee;

RICHARD L. BIGELOW, ESQ., Hazleton, Penna., for Florence F. Dale;

HON. E. L. ORVIS, HARRY KELLER, ESQ., M. C. RHONE, ESQ., Bellefonte, Penna., for the rule.

ORDER.

(Filed September 18, 1922.)

September 15, 1922, after argument on the showing made and on due consideration, the Court being satisfied that the subpœna issued was not in conformity with the initial petition filed, the subpœna is quashed.

The amendment of the original petition as now presented is allowed and the clerk is directed to issue a subpœna as prayed for in the petition as amended.

Service of subpœna to be made on Andrew Breeze, if personal service cannot be obtained on him, by publishing this order together with such subpœna in the *Keystone Gazette*, a newspaper published at Bellefonte, in said district, for two consecutive weeks; the last of

said publications to be made on or before the tenth day of October, 1922, and by mailing copy of this order and subpœna, to the last place of abode of Andrew Breeze, to wit: Downingtown, Pennsylvania, in the Eastern District of Pennsylvania, on or before the date of the first publication.

By THE COURT,
CHARLES B. WITMER,
U. S. District Judge.

P. S.—The first paragraph may be omitted from adv.

C. B. W.

IN THE DISTRICT COURT OF THE UNITED STATES, FOR THE MIDDLE DISTRICT OF PENNSYLVANIA.

IN BANKRUPTCY. No. 4268.

In the Matter of the Centre County Banking Company, a Partnership, and John M. Shugert, Individually,

Bankrupts.

AMENDED PETITION IN BANKRUPTCY.

(Filed August 26, 1922.)

To the Honorable Charles B. Witmer, Judge of the District Court of the United States for the Middle District of Pennsylvania:

The petition of John M. Shugert, of the Borough of Bellefonte, in the County of Centre, in said district, of the occupation of private banking, respectfully shows:

That your petitioner and George R. Meek, Mary C. Harris, Florence F. Dale and Andrew Breeze, who survived Lavina Catherine Harris, now deceased, also a partner in her lifetime, are and have been partners under the style of Centre County Banking Company, which partnership has had its principal place of business at the Borough of Bellefonte in the County of Centre, in said district, for the greater portion of the six months immediately preceding the filing of this petition; and that said partnership is insolvent and owes debts in excess of one thousand dollars ($1000). That the said Lavina Catherine Harris died on or about the tenth day of January, A. D. 1921, and her estate will be administered by the Orphans' Court of Centre County upon the filing of the account of John Blanchard and Sarah C. Brown, her executors.

That such partnership and your petitioner are willing to surrender its and his property for the benefit of its and his creditors, respectively, except such as is exempt by law, and desire to obtain the benefits of the bankruptcy law of 1898, as amended.

That the said George R. Meek, whose residence is in the Borough of Bellefonte, in the County of Centre, in the Middle District of Pennsylvania, Mary C. Harris, whose residence is in the said borough and county, in said district; Florence F. Dale, whose residence is in the City of Hazleton, County of Luzerne, in the Middle District of Pennsylvania, and Andrew Breeze, whose residence is in the Borough of Downingtown, County of Chester, in the Eastern District of Pennsylvania, have not offered to join in said petition nor is your petitioner informed of their intention in said matter; that said parties are neither wage earners nor persons engaged chiefly in farming or the tillage of the soil, and as individuals owe debts which they are unable to pay in full.

That there has been no final settlement of the partnership business of said partners, doing business as the Centre County Banking Company; and there are debts of said partnership, which are unsettled and unpaid, amounting to more than one thousand dollars. That each of said partners is insolvent and they are jointly or severally unable to pay said partnership debts.

That the schedule hereto annexed marked A, and verified by your petitioner's oath, contains a full and true statement of all the debts of said partnership, and (so far as it is possible to ascertain) the names and residences of its creditors, and such further statements concerning said debts as are required by said law.

That the schedule hereto annexed marked B, and verified by your petitioner's oath, contains an accurate inventory of all of the property of said partnership,

both real and personal, and such further statements concerning said property as are required by said law.

That the schedule hereto annexed marked C, and verified by the oath of your petitioner contains a full and true statement of all of his individual debts, and (so far as it is possible to ascertain) the names and places of residence of his individual creditors, and such further statements concerning said debts as are required by said law.

That the schedule hereto annexed marked D, and verified by the oath of your petitioner contains an accurate inventory of all of his individual property, both real and personal, and such further statements concerning said property as is required by said law.

WHEREFORE, your petitioner prays that such partnership as well as George R. Meek, Mary C. Harris, Florence F. Dale, Andrew Breeze, and your petitioner, surviving partners of Lavina Catherine Harris, deceased, may each individually, as well as said firm, be adjudged bankrupt within the purview of such bankruptcy law of 1898, as amended, and that service of this petition, with a subpœna, be made upon George R. Meek, Mary C. Harris, Florence F. Dale and Andrew Breeze, such non-consenting partners, and that proceedings be had as are provided in said law and General Order VIII of the Supreme Court, and as the Court may order.

JNO. M. SHUGERT,
Petitioner.

S. D. GETTIG,
Attorney for Petitioner,
Bellefonte, Pa.

UNITED STATES OF AMERICA,
MIDDLE DISTRICT OF PENNSYLVANIA, } *ss.:*

I, JOHN M. SHUGERT, the petitioning debtor mentioned and described in the foregoing petition, do hereby make solemn oath that the statements contained therein are true according to the best of my knowledge, information and belief. That he is without funds to pay the cost of filing this petition and that he cannot obtain the money with which to pay such fees.

Sworn and subscribed before me this 22d day of August, A. D. 1922. } JNO. M. SHUGERT,
Petitioner.

ELIZABETH C. WALKER,
(Seal) *Notary Public.*

My commission expires March 6, 1925.

IN THE DISTRICT COURT OF THE UNITED STATES, FOR THE MIDDLE DISTRICT OF PENNSYLVANIA.

IN BANKRUPTCY. No. .

In the Matter of John M. Shugert, George R. Meek Mary C. Harris, Florence F. Dale, Andrew Breeze Surviving Partners of Lavina Catherine Harris, Deceased, Individually and Trading as Centre County Banking Company, Against Whom a Petition for Adjudication in Bankruptcy Has Been Filed.

SUBPŒNA TO ALLEGED BANKRUPT.

UNITED STATES OF AMERICA,
MIDDLE DISTRICT OF PENNSYLVANIA, } *ss.:*

To George R. Meek, Mary C. Harris, Florence F. Dale and Andrew Breeze, surviving partners of Lavina Catherine Harris, deceased, individually and trading as Centre County Banking Company, in said District:

GREETING:

For certain causes offered before the District Court of the United States of America within and for the Middle District of Pennsylvania, as a Court of Bankruptcy.

WE COMMAND AND STRICTLY ENJOIN YOU laying all other matters aside and notwithstanding any excuse, that you personally appear before our said District Court, to be holden at Scranton, in said district, on the third day of October, A. D., 1922, to answer a petition filed by John M. Shugert, in our said court praying

that you may be adjudged a bankrupt; and to do further and receive that which our said District Court shall consider in this behalf. And this you are in no wise to omit, under the pains and penalties of what may befall thereon.

Witness the HONORABLE CHARLES B. WITMER, Judge of the said court, and the seal (Seal) thereof, at Scranton, this eighteenth day of September, A. D. 1922.

G. C. SCHEUER,
Clerk.

S. W. HOFFORD,
Deputy Clerk.

And now, to wit, September 20, A. D. 1922, I, MARY C. HARRIS, within named, do hereby appear in person to the within subpœna and accept service thereof and acknowledge receipt of copy of amended petition and schedules thereto attached, with the same force and effect as if the within subpœna had been served upon me, together with said amended petition and schedules, by the United States Marshal, and as provided by order of Charles B. Witmer, United States District Judge, which said order is dated September 15, 1922.

MARY C. HARRIS.

IN THE DISTRICT COURT OF THE UNITED STATES, FOR THE MIDDLE DISTRICT OF PENNSYLVANIA.

IN BANKRUPTCY. NO. .

In the Matter of John M. Shugert, George R. Meek Mary C. Harris, Florence F. Dale, Andrew Breeze Surviving Partners of Lavina Catherine Harris, Deceased, Individually and Trading as Centre County Banking Company, Against Whom a Petition for Adjudication in Bankruptcy Has Been Filed.

SUBPŒNA TO ALLEGED BANKRUPT.

(Filed October 3, 1922.)

UNITED STATES OF AMERICA,
MIDDLE DISTRICT OF PENNSYLVANIA, } *ss.:*

To George R. Meek, Mary C. Harris, Florence F. Dale and Andrew Breeze, surviving partners of Lavina Catherine Harris, deceased, individually and trading as Centre County Banking Company, in said District:

GREETING:

For certain causes offered before the District Court of the United States of America within and for the Middle District of Pennsylvania, as a Court of Bankruptcy.

WE COMMAND AND STRICTLY ENJOIN YOU laying all other matters aside and notwithstanding any excuse, that you personally appear before our said District Court, to be holden at Scranton, in said district, on the third day of October, A. D., 1922, to answer a petition filed by John M. Shugert, in our said court praying

that you may be adjudged a bankrupt; and to do further and receive that which our said District Court shall consider in this behalf. And this you are in no wise to omit, under the pains and penalties of what may befall thereon.

Witness the HONORABLE CHARLES B. WITMER, Judge of the said court, and the seal (Seal) thereof, at Scranton, this eighteenth day of September, A. D. 1922.

G. S. SCHEUER,
Clerk.

S. W. HOFFORD,
Deputy Clerk.

Now, to wit, September 20, A. D. 1922, served the within subpœna on Mary C. Harris personally, leaving with her a true and attested copy thereof, together with a copy of amended petition and schedules. Service was made at Bellefonte, within the Middle District of Pennsylvania.

So answers

JOHN H. GLASS,
United States Marshal.
Per A. J. HERR,
Deputy.

Now to wit, September 20, 1922, return the within subpœna N. E. I. as to Andrew Breeze.

So answers

JOHN H. GLASS,
United States Marshal.
Per T. F. PURCELL,
Deputy.

MARSHAL'S RETURN.

Now, to wit, September 25, A. D. 1922, served the within subpœna to alleged bankrupt upon Florence F. Dale, personally, individually and trading as the Centre County Banking Company, service was made in the City of Hazleton, County of Luzerne, and within the Middle District of Pennsylvania.

So answers

JOHN H. GLASS,
United States Marshal.
By GEORGE GREEN,
Deputy.

Now, to wit September 27, 1922, served the within subpœna to alleged bankrupt upon George R. Meek personally, individually and trading as the Centre County Banking Company, at his place of business on High Street, Bellefonte, County of Centre, and within the Middle District of Pennsylvania, by leaving with him a true copy of the within writ; together with a copy of debtor's petition.

So answers

JOHN H. GLASS,
U. S. Marshal.
By A. J. HERR,
Deputy U. S. Marshal.

IN THE DISTRICT COURT OF THE UNITED STATES, FOR THE MIDDLE DISTRICT OF PENNSYLVANIA.

IN BANKRUPTCY. No. 4268.

In the Matter of the Centre County Banking Company, a Partnership, and John M. Shugert, Individually,
Bankrupts.

MOTION TO DISMISS PETITION.

To Honorable Charles B. Witmer, Judge of the District Court of the United States for the Middle District of Pennsylvania:

George R. Meek, one of the persons mentioned in the amended petition in bankruptcy filed by John M. Shugert in the above stated case, appearing specially and only for the purpose of challenging the jurisdiction of the Court to allow the amendment to the original petition filed herein; to entertain said petition in bankruptcy or hear and determine the same or to award the subpœna issued thereon, makes and files herewith his motion to dismiss the said petition as to him and to quash the subpœna issued thereon for the reasons herein set forth, and prays that an order be made staying all further proceedings in said case until the motion herein filed shall be disposed of.

1. The District Court of the United States for the Middle District of Pennsylvania has no jurisdiction, right, power or authority to issue a subpœna in bankruptcy upon the voluntary petition of the said John M. Shugert requiring this respondent to show cause as set forth therein.

2. The District Court of the United States for the Middle District of Pennsylvania is without jurisdiction, right, power or authority to adjudicate this respondent

a bankrupt upon the voluntary petition of the said John M. Shugert for any cause or thing mentioned or set forth in the amended petition of the said John M. Shugert filed herein.

3. An involuntary proceeding in bankruptcy can only be instituted and maintained against this respondent by the required number of creditors in a petition filed by them setting forth therein one or more of the acts of bankruptcy prescribed in the Bankruptcy Act of 1898 and the amendments and supplements thereto, and this court is without jurisdiction to hear and determine the question of solvency or insolvency of this respondent or to adjudicate him a bankrupt upon the voluntary petition of the said John M. Shugert as filed herein.

4. That the original petition of John M. Shugert was a voluntary one on his part as an alleged partner, praying that the Centre County Banking Company, the alleged partnership, be declared a bankrupt consequently this court had no jurisdiction to allow the amendment subsequently prayed for by John M. Shugert that changed radically the subject matter as well as the nature of the proceeding from a purely voluntary one to an involuntary petition against the respondent.

5. There is no power or authority conferred by the laws of the United States authorizing or conferring jurisdiction upon the District Courts of the United States to hear and determine an involuntary petition filed by one partner for the purpose of having the partnership declared a bankrupt where it appears upon the face of the petition as in this case that before the petition in bankruptcy was filed the partnership was dissolved by the death of one of the partners and the estate of such deceased partner is in process of ad-

ministration in the Orphans' Court of Centre County, Pennsylvania, as stated in said petition.

6. Neither the Bankruptcy Act of 1898 nor any other law of the United States confers power or authority upon one partner to file a petition in bankruptcy in the partnership name for the purpose of having the partnership declared a bankrupt where one or more of the remaining partners do not assent or consent thereto.

7. In so far as general order No. 8 of the Supreme Court of the United States attempts to confer jurisdiction upon courts of bankruptcy to adjudicate as bankrupts non-consenting partners who refuse to join in a bankruptcy petition instituted by one partner, said general order is in effect legislation not authorized by the Constitution and laws of the United States and is in violation thereof, and the enforcement of the provisions of said order against this respondent in these proceedings would be a denial as to him of the equal protection of the laws of the United States, and would amount to a taking of his property without due process of law which right, privilege, and immunity are conferred upon him as a citizen of the United States by the Constitution thereof.

8. The Bankruptcy Act of 1898 and amendments thereto do not authorize the filing of a voluntary petition in bankruptcy by one partner without the consent of all of the other partners.

9. After the dissolution of a partnership by operation of law, *viz.*, the death of one or more of the partners, one of the surviving partners cannot institute bankruptcy proceedings and have the former partnership adjudicated a bankrupt.

10. For other reasons appearing upon the face of the petition filed by said John M. Shugert, the said

Court is without jurisdiction to adjudicate this respondent a bankrupt as prayed for in said petition and is without jurisdiction to adjudicate said partnership bankrupt in said proceeding.

Wherefore, respondent files *this his motion to dismiss* the said petition in bankruptcy and set aside the subpœna issued against him therein at the cost of the said John M. Shugert and prays that an order be made staying all further proceedings in said case until this motion shall be disposed of by the Court.

GEO. R. MEEK.

STATE OF PENNSYLVANIA, }
COUNTY OF CENTRE, } *ss.:*

George R. Meek, being duly sworn deposes and says that the facts set forth in the foregoing petition are true in so far as he has personal knowledge of the same, and in so far as they are averred upon information he believes them to be true.

Sworn and subscribed to before me this 30th day of September, A. D. 1922. } GEO. R. MEEK.

BELLE WEAVER,
(Seal) *Notary Public.*
My commission expires February 19, 1925.

October 3, 1922, directed to be filed. Hearing fixed for Monday, October 9, 1922, at 10 o'clock A. M.

CHARLES B. WITMER,
District Judge.

October 20, 1922 after argument and on due consideration the motion to dismiss is denied.

CHARLES B. WITMER,
District Judge.

IN THE DISTRICT COURT OF THE UNITED STATES, FOR THE MIDDLE DISTRICT OF PENNSYLVANIA.

IN BANKRUPTCY. No. 4268.

In the Matter of John M. Shugert, George R. Meek, Mary C. Harris, Florence F. Dale and Andrew Breeze, Surviving Partners of Lavina Catherine Harris, Deceased, Individually, and Trading as Centre County Banking Company,

Bankrupts.

ANSWER

OF JOHN M. SHUGERT TO PETITION OF GEORGE R. MEEK FOR RULE TO DISMISS THE PETITION IN BANKRUPTCY AND SET ASIDE THE SUBPŒNA ISSUED AGAINST HIM.

(Filed October 13, 1922.)

To the Honorable Charles B. Witmer, Judge of the District Court of the United States for the Middle District of Pennsylvania:

The answer of JOHN M. SHUGERT to the petition for a rule in the above stated case, respectfully represents:

First.—That it is not true, as set forth in paragraph one of the petition of the said George R. Meek, that your Honorable Court has no jurisdiction, right, power or authority to issue a subpœna in bankruptcy upon the voluntary petition filed by myself, but said Court has jurisdiction of said cause of action to require the said George R. Meek to show cause why he should not be declared a bankrupt, as a partner in the Centre County Banking Company.

Second.—That it is not true, as set forth in paragraph two of the petition of the said George R. Meek,

that the said Court is without jurisdiction, right, power or authority to adjudicate him a bankrupt, upon the petition filed by me as amended.

Third.—That it is not true, as set forth in paragraph three of the petition of the said George R. Meek, that only an involuntary proceeding in bankruptcy can be instituted and maintained against him by the required number of creditors setting forth one or more acts of bankruptcy, neither is it true that the said Court is without jurisdiction to hear and determine the question of solvency or insolvency of the said George R. Meek or to adjudicate him a bankrupt upon the voluntary petition as amended, filed by me. Respondent further avers that it is not necessary nor mandatory under the Bankruptcy Act of 1898 and its amendments, that where a voluntary petition is filed by one member of a partnership, on behalf of the said partnership, and the other members not joining, an act of bankruptcy should be alleged as to such non-joining members.

Fourth.—In answer to paragraph four of the petition of the said George R. Meek, this respondent avers that your Honorable Court on the fifteenth day of September, 1922, allowed the application to amend the original petition filed by me, which said amended petition, *inter alia*, prays that all members of said partnership be adjudged bankrupts, and that by the same order the subpœna theretofore issued was quashed by the said Court and a new subpœna directed to be issued in accordance with the amended petition. That said proceedings, after said amendment and the quashing of said subpœna, are proceedings *de novo*, as upon the original petition. That notice was accepted of the application to amend said petition, prior to the time

that the same was filed in said court, by counsel for the said George R. Meek, and no answer filed or objection made thereto.

Fifth.—Your respondent avers that the allegations contained in paragraph five of the petition of the said George R. Meek are not true, but that the business of said copartnership was continued after the death of Lavina Catherine Harris, evidently referred to in said paragraph, until the time that the business was suspended on May 13, 1922. That the said Court has ample authority, jurisdiction and power under the Bankruptcy Act of 1898 and its amendments to declare the surviving partners bankrupts.

Sixth.—That it is not true, as set forth in paragraph six of the petition of the said George R. Meek, that neither the Bankruptcy Act of 1898, nor any other law of the United States, confers power or authority upon one partner to file a petition in bankruptcy in the partnership name, for the purpose of having the partnership declared a bankrupt, where one or more of the remaining partners do not assent or consent thereto. Respondent avers that the said Bankruptcy Act does authorize a petition in bankruptcy to be filed by one partner, where all do not consent to join on behalf of the partnership and the individual members thereof, and that under the Bankruptcy Act, above referred to, and its amendments, the said Court is authorized to declare all of the members of such partnership, as well as the partnership itself, bankrupts.

Seventh.—Your respondent avers that the allegations set forth in paragraph seven of the petition of the said George R. Meek, are not true, but that General Order Number Eight of the Supreme Court

of the United States is an order defining the method of procedure in bankruptcy, duly promulgated by said Court under the powers conferred upon it, by the Bankruptcy Act of 1898 and its amendments, and is not in violation of the Constitution of the United States, and is not a denial of the equal protection of the laws of the United States, nor of the taking of property without due process of law. Respondent further avers that said order has the effect of law and is not in violation of any constitutional right, but provides a method for putting into effect the said Bankruptcy Act.

Eighth.—That the allegations set forth in paragraph eight of the petition of the said George R. Meek are not true, but the said Court, as respondent is informed, has ample jurisdiction to declare all partners bankrupts upon the petition of one or more partners.

Ninth.—That the allegations set forth in paragraph nine do not apply to the copartnership of the Centre County Banking Company, and that it is not true that after the death of one partner, there was a dissolution as to the others, but that said partnership continued business until they were financially unable to do so any longer and were compelled to close their doors for the purpose of a settlement of said partnership affairs, as authorized by the Bankruptcy Act.

Tenth.—That your respondent denies the allegations of paragraph ten of the petition of the said George R. Meek, but avers that under the amended petition filed the said Court has ample jurisdiction to adjudicate the said George R. Meek, as well as all other surviving partners of the Centre County Banking Company, bankrupts.

WHEREFORE, this respondent prays your Honorable Court that the motion to dismiss the petition in bankruptcy, made by the said George R. Meek, and to set aside subpœna issued under said amended petition, be dismissed at his costs.

JNO. M. SHUGERT.

STATE OF PENNSYLVANIA, }
COUNTY OF CENTRE, } *ss.:*

Before me, the undersigned, a notary public in and for said State and county, personally appeared JOHN M. SHUGERT, above named, who being duly sworn according to law, doth depose and say that the facts set forth in the foregoing answer are true and correct to the best of his knowledge, information and belief.

Sworn and subscribed before me this 12th day of October, A. D. 1922. } JNO. M. SHUGERT.

ELIZABETH C. WALKER,
(Seal) *Notary Public.*

My commission expires March 6, 1925.

IN THE DISTRICT COURT OF THE UNITED STATES, FOR THE MIDDLE DISTRICT OF PENNSYLVANIA.

IN BANKRUPTCY. No. 4268.

In the Matter of the Centre County Banking Company, a Partnership, and John M. Shugert, Individually, Bankrupts.

MOTION TO DISMISS PETITION.

(Filed October 3, 1922.)

To Honorable Charles B. Witmer, Judge of the District Court of the United States for the Middle District of Pennsylvania:

Florence F. Dale, one of the persons mentioned in the amended petition in bankruptcy filed by John M. Shugert in the above-stated case, appearing specially and only for the purpose of challenging the jurisdiction of the court to allow the amendment to the original petition filed herein; to entertain said petition in bankruptcy or hear and determine the same or to award the subpœna issued thereon, makes and files herewith her motion to dismiss the said petition as to her and to quash the subpœna issued thereon for the reasons herein set forth, and prays that an order be made staying all further proceedings in said case until the motion herein filed shall be disposed of.

1. The District Court of the United States for the Middle District of Pennsylvania has no jurisdiction, right, power or authority to issue a subpœna in bankruptcy upon the voluntary petition of the said John M. Shugert requiring this respondent to show cause as set forth therein.

2. The District Court of the United States for the Middle District of Pennsylvania is without jurisdiction, right, power or authority to adjudicate this respondent a bankrupt upon the voluntary petition of the said John M. Shugert for any cause or thing mentioned or set forth in the amended petition of the said John M. Shugert filed herein.

3. An involuntary proceeding in bankruptcy can only be instituted and maintained against this respondent by the required number of creditors in a petition filed by them setting forth therein one or more of the acts of bankruptcy prescribed in the Bankruptcy Act of 1898 and the amendments and supplements thereto, and this Court is without jurisdiction to hear and determine the question of solvency or insolvency of this respondent or to adjudicate her a bankrupt upon the voluntary petition of the said John M. Shugert as filed herein.

4. That the original petition of John M. Shugert was a voluntary one on his part as an alleged partner, praying that the Centre County Banking Company, the alleged partnership, be declared a bankrupt; consequently, this Court had no jurisdiction to allow the amendment subsequently prayed for by John M. Shugert that changed radically the subject matter as well as the nature of the proceeding from a purely voluntary one to an involuntary petition against the respondent.

5. There is no power or authority conferred by the laws of the United States authorizing or conferring jurisdiction upon the District Courts of the United States to hear and determine an involuntary petition filed by one partner for the purpose of having the partnership declared a bankrupt where it appears upon the face of the petition as in this case that before the petition in bankruptcy was filed the partnership

was dissolved by the death of one of the partners and the estate of such deceased partner is in process of administration in the Orphans' Court of Centre County, Pennsylvania, as stated in said petition.

6. Neither the Bankruptcy Act of 1898 nor any other law of the United States confers power or authority upon one partner to file a petition in bankruptcy in the partnership name for the purpose of having the partnership declared a bankrupt where one or more of the remaining partners do not assent or consent thereto.

7. In so far as General Order No. 8 of the Supreme Court of the United States attempts to confer jurisdiction upon courts of bankruptcy to adjudicate as bankrupts non-consenting partners who refuse to join in a bankruptcy petition instituted by one partner, said general order is in effect legislation not authorized by the Constitution and laws of the United States and is in violation thereof, and the enforcement of the provisions of said order against this respondent in these proceedings would be a denial as to her of the equal protection of the laws of the United States, and would amount to a taking of her property without due process of law which right, privilege, and immunity are conferred upon her as a citizen of the United States by the Constitution thereof.

8. The Bankruptcy Act of 1898 and amendments thereto do not authorize the filing of a voluntary petition in bankruptcy by one partner without the consent of all of the other partners.

9. After the dissolution of a partnership by operation of law, *viz.*, the death of one or more of the partners, one of the surviving partners cannot institute bankruptcy proceedings and have the former partnership adjudicated a bankrupt.

10. For other reasons appearing upon the face of the petition filed by said John M. Shugert, the said Court is without jurisdiction to adjudicate this respondent a bankrupt as prayed for in said petition and is without jurisdiction to adjudicate said partnership bankrupt in said proceeding.

Wherefore, respondent files this her motion to dismiss the said petition in bankruptcy and set aside the subpœna issued against her therein at the cost of the said John M. Shugert and prays that an order be made staying all further proceedings in said case until this motion shall be disposed of by the Court.

FLORENCE F. DALE,
By her Attorney, Ellis L. Orvis.

STATE OF PENNSYLVANIA, }
COUNTY OF } *ss.:*

Florence F. Dale by her attorney, Ellis L. Orvis, being duly sworn deposes and says that the facts set forth in the foregoing petition are true in so far as she has personal knowledge of the same, and in so far as they are averred upon information she believes them to be true.

Sworn and subscribed to before me this 2d day of October, A. D. 1922. } FLORENCE F. DALE, *By her Attorney, Ellis L. Orvis.*

BELLE WEAVER,
(Seal) *Notary Public.*
My commission expires February 19, 1925.

October 20, 1922, after argument and on due consideration, the motion to dismiss is denied.

CHARLES B. WITMER,
District Judge.

IN THE DISTRICT COURT OF THE UNITED STATES, FOR THE MIDDLE DISTRICT OF PENNSYLVANIA.

IN BANKRUPTCY. No. 4268.

In the Matter of John M. Shugert, George R. Meek, Mary C. Harris, Florence F. Dale and Andrew Breeze, Surviving Partners of Lavina Catherine Harris, Deceased, Individually, and Trading as Centre County Banking Company,

Bankrupts.

ANSWER

OF JOHN M. SHUGERT TO PETITION OF FLORENCE F. DALE FOR RULE TO DISMISS THE PETITION IN BANKRUPTCY AND SET ASIDE THE SUBPŒNA ISSUED AGAINST HER.

(Filed October 13, 1922.)

To the Honorable Charles B. Witmer, Judge of the District Court of the United States for the Middle District of Pennsylvania:

The answer of JOHN M. SHUGERT to the petition for a rule in the above stated case, respectfully represents:

First.—That it is not true, as set forth in paragraph one of the petition of the said Florence F. Dale, that your Honorable Court has no jurisdiction, right, power or authority to issue a subpœna in bankruptcy upon the voluntary petition filed by myself, but said Court has jurisdiction of said cause of action to require the said Florence F. Dale to show cause why she should not be declared a bankrupt, as a partner in the Centre County Banking Company.

Second.—That it is not true, as set forth in paragraph two of the petition of the said Florence F. Dale, that the said Court is without jurisdiction, right, power or authority to adjudicate her a bankrupt, upon the petition filed by me as amended.

Third.—That it is not true, as set forth in paragraph three of the petition of the said Florence F. Dale, that only an involuntary proceeding in bankruptcy can be instituted and maintained against her by the required number of creditors setting forth one or more acts of bankruptcy, neither is it true that the said Court is without jurisdiction to hear and determine the question of solvency or insolvency of the said Florence F. Dale or to adjudicate her a bankrupt upon the voluntary petition as amended, filed by me. Respondent further avers that it is not necessary nor mandatory under the Bankruptcy Act of 1898 and its amendments, that, where a voluntary petition is filed by one member of a partnership, on behalf of the said partnership, and the other members not joining, an act of bankruptcy should be alleged as to such non-joining members.

Fourth.—In answer to paragraph four of the petition of the said Florence F. Dale, thi respondent avers that your Honorable Court on the fifteenth day of September, 1922 allowed the application to amend the original petition filed by me, which said amended petition, *inter alia,* prays that all members of said partnership be adjudged bankrupts, and that by the same order the subpœna theretofore issued was quashed by the said Court and a new subpœna directed to be issued in accordance with the amended petition. That said proceedings, after said amendment and the quashing of said subpœna, are proceedings *de novo,* as upon the original petition. That no-

tice was accepted of the application to amend said petition, prior to the time that the same was filed in said court, by counsel for the said Florence F. Dale, and no answer filed or objection made thereto.

Fifth.—Your respondent avers that the allegations contained in paragraph five of the petition of the said Florence F. Dale are not true, but that the business of said copartnership was continued after the death of Lavina Catherine Harris, evidently referred to in said paragraph, until the time that the business was suspended on May 13, 1922. That the said Court has ample authority, jurisdiction and power under the Bankruptcy Act of 1898 and its amendments to declare the surviving partners bankrupts.

Sixth.—That it is not true, as set forth in paragraph six of the petition of the said Florence F. Dale, that neither the Bankruptcy Act of 1898, nor any other law of the United States, confers power or authority upon one partner to file a petition in bankruptcy in the partnership name, for the purpose of having the partnership declared a bankrupt, where one or more of the remaining partners do not assent or consent thereto. Respondent avers that the said Bankruptcy Act does authorize a petition in bankruptcy to be filed by one partner, where all do not consent to join on behalf of the partnership and the individual members thereof, and that under the Bankruptcy Act, above referred to, and its amendments, the said Court is authorized to declare all of the members of such partnership, as well as the partnership itself, bankrupts.

Seventh.—Your respondent avers that the allegations set forth in paragraph seven of the petition of the said Florence F. Dale, are not true, but that General Order Number Eight of the Supreme Court

of the United States is an order defining the method of procedure in bankruptcy, duly promulgated by said Court under the powers conferred upon it, by the Bankruptcy Act of 1898 and its amendments, and is not in violation of the Constitution of the United States, and is not a denial of the equal protection of the laws of the United States, nor of the taking of property without due process of law. Respondent further avers that said order has the effect of law and is not in violation of any constitutional right, but provides a method for putting into effect the said Bankruptcy Act.

Eighth.—That the allegations set forth in paragraph eight of the petition of the said Florence F. Dale are not true, but the said Court, as respondent is informed, has ample jurisdiction to declare all partners bankrupts upon the petition of one or more partners.

Ninth.—That the allegations set forth in paragraph nine do not apply to the copartnership of the Centre County Banking Company, and that it is not true that after the death of one partner, there was a dissolution as to the others, but that said partnership continued business until they were financially unable to do so any longer and were compelled to close their doors for the purpose of a settlement of said partnership affairs, as authorized by the Bankruptcy Act.

Tenth.—That your respondent denies the allegations of paragraph ten of the petition of the said Florence F. Dale, but avers that under the amended petition filed the said Court has ample jurisdiction to adjudicate the said Florence F. Dale, as well as all other surviving partners of the Centre County Banking Company, bankrupts.

WHEREFORE, this respondent prays your Honorable Court that the motion to dismiss the petition in bankruptcy, made by the said Florence F. Dale, and to set aside the subpœna issued under said amended petition, be dismissed at her costs.

JNO. M. SHUGERT.

STATE OF PENNSYLVANIA, }
COUNTY OF CENTRE, } *ss.:*

Before me, the undersigned, a notary public in and for said State and county, personally appeared JOHN M. SHUGERT, above named, who being duly sworn according to law, doth depose and say that the facts set forth in the foregoing answer are true and correct to the best of his knowledge, information and belief.

Sworn and subscribed before me this 12th day of October, A. D. 1922. } JNO. M. SHUGERT.

ELIZABETH C. WALKER,
(Seal) *Notary Public.*

My commission expires March 6, 1925.

IN THE DISTRICT COURT OF THE UNITED STATES, FOR THE MIDDLE DISTRICT OF PENNSYLVANIA.

IN BANKRUPTCY. No. 4268.

In the Matter of the Centre County Banking Company, a Partnership, and John M. Shugert, Individually,
Bankrupts.

PETITION OF GEORGE R. MEEK TO REVISE IN MATTER OF LAW.

(Filed October 27, 1922.)

To the Honorable the Judges of the Circuit Court of Appeals of the Third Circuit of the United States:

Your petitioner respectfully shows:

That one John M. Shugert on the eleventh day of July, 1922, filed a voluntary petition in bankruptcy in the District Court of the United States for the Middle District of Pennsylvania in which he set forth *inter alia* that he and others including your petitioner were partners trading as Centre County Banking Company and that he the said John M. Shugert was insolvent and that said partnership was insolvent, that said petition contained a prayer that the said Shugert and said partnership should be adjudicated bankrupt.

Thereafter the said Shugert filed an amended petition by leave of Court in which it is set forth, *inter alia:*

> "That your petitioner (the said John M. Shugert) and George R. Meek, Mary C. Harris, Florence F. Dale and Andrew Breeze who survived Lavina Catherine Harris, now deceased, also a partner in her lifetime, are and have been partners under the style of Centre County Bank-

ing Company which partnership has had its principal place of business at the Borough of Bellefonte in the County of Centre in said district for the greater portion of the six months immediately preceding the filing of this petition; and that said partnership is insolvent and owes debts in excess of one thousand dollars ($1,000.00). That the said Lavina Catherine Harris died on or about the tenth day of January A. D. 1921 and her estate will be administered by the orphans court of Centre County upon the filing of the account of John Blanchard and Sarah C. Brown, her executors. That such partnership and your petitioner are willing to surrender its and his property for the benefit of its and his creditors respectfully except such as is exempt by law and desires to obtain the benefits of the bankruptcy law of 1898 as amended."

Said amended petition then sets out the residences of your petitioner and other persons named in said petition and avers that none of them are wage earners or persons engaged chiefly in farming or the tillage of the soil and as individuals owe debts which they are unable to pay in full. That there has been no final settlement of said partnership doing business as Centre County Banking Company; and there are debts of said partnership which are unsettled and unpaid amounting to more than one thousand dollars ($1000). That each of said partners is insolvent and they are jointly or severally unable to pay said partnership debts.

Said petition then sets forth that the schedules of the said John M. Shugert individually and as represented by him, the schedules of said partnership are attached to said petition.

The prayer of said amended petition is:

"Wherefore your petitioner prays that such partnership as well as George R. Meek, Mary C.

Harris, Florence F. Dale, Andrew Breeze and your petitioner, surviving partners of Lavina Catherine Harris, deceased, may as individuals as well as said firm be adjudged bankrupt within the purview of such bankruptcy law of 1898 and that service of this petition with a subpœna be made upon George R. Meek, Mary C. Harris, Florence F. Dale and Andrew Breeze, such non-consenting partners and that proceedings be had as are provided in said law and General Order No. VIII of the Supreme Court and as the court may order."

That your petitioner appeared specially in answer to said subpœna and only for the purpose of moving to dismiss said amended petition in bankruptcy for the following reasons:

(A) That said court was without jurisdiction upon the voluntary petition of John Shugert to issue a subpœna requiring this respondent to show cause why he should not be adjudged bankrupt.

(B) That said court was without jurisdiction upon the voluntary petition of said John M. Shugert to adjudicate this respondent a bankrupt.

(C) That an involuntary petition in bankruptcy can only be instituted against this respondent by the required number of creditors upon proof of his having committed one of the acts of bankruptcy specified in the act.

(D) That the said court had no jurisdiction to allow the amended petition of said John M. Shugert.

(E) That a bankruptcy proceeding cannot be instituted against a partnership by one partner where it appears upon the face of the petition that before the petition in bankruptcy was filed the partnership was dissolved by the

death of one of the partners and the estate of such deceased partner in process of administration in the Orphans' Court of the proper county.

(F) That the Bankruptcy Act confers no power or authority on one partner to file a petition in bankruptcy in the partnership name where one or more of the remaining partners do not assent or consent thereto.

(G) That so much of General Order No. VIII of the Supreme Court as attempts to confer jurisdiction upon the courts of bankruptcy to adjudicate as bankrupts non-consenting partners who refuse to join in a bankruptcy petition is legislation not authorized by the Constitution of the United States and the laws thereof and is in violation thereof as to the due process clause and the equal protection of the law clause of the Constitution of the United States.

(H) No provision is made in the Bankruptcy Law of 1898 for the adjudication of partnership upon the petition of one of the partners without the consent of all of the partners.

(I) That after a dissolution of a partnership by operation of law one of the surviving partners cannot institute bankruptcy proceedings in behalf of or against the partnership.

That after hearing argument thereon the District Court for the said Middle District made the following order therein:

"October 20th, 1922, after argument and due consideration the motion to dismiss is denied.

"CHARLES B. WITMER,
"*District Judge.*"

That said order was erroneous in matter of law in that the District Court of the United States for said Middle District of Pennsylvania erred in not sustaining petitioner's motion to dismiss said amended petition in bankruptcy and erred in making the order denying the motion filed by this petitioner to dismiss said petition in bankruptcy.

Petitioner here assigns for error more particularly the several errors he believes the Court made in the order of October 20, 1922.

1. The Court erred in not sustaining the petition to dismiss upon the ground that,

> Said Court was without jurisdiction upon the voluntary petition of John M. Shugert to issue a subpœna requiring this respondent to show cause why he should not be adjudged bankrupt.

2. The Court erred in not sustaining petitioner's motion to dismiss said petition for the reason,

> That said Court was without jurisdiction upon the voluntary petition of said John M. Shugert to adjudicate this respondent a bankrupt.

3. The Court erred in not sustaining the petitioner's motion to dismiss the said petition for the reason,

> That an involuntary petition in bankruptcy can only be instituted against this respondent by the required number of creditors upon proof of his having committed one of the acts of bankruptcy specified in the act.

4. That the Court erred in not sustaining the petitioner's motion to dismiss the said petition for the reason,

> That the said Court had no jurisdiction to allow the amended petition of said John M. Shugert.

5. The Court erred in not sustaining the petitioner's motion to dismiss the said petition for the reason,

That a bankruptcy proceeding cannot be instituted against a partnership by one partner where it appears upon the face of the petition that before the petition in bankruptcy was filed the partnership was dissolved by the death of one of the partners and the estate of such deceased partner is in process of administration in the Orphans' Court of the proper county.

6. The Court erred in not sustaining the petitioner's motion to dismiss the said petition for the reason

That the Bankruptcy Act confers no power or authority on one partner to file a petition in bankruptcy in the partnership name where one or more of the remaining partners do not assent or consent thereto.

7. The Court erred in not sustaining the petitioner's motion to dismiss the said petition for the reason

That so much of General Order No. VIII of the Supreme Court as attempts to confer jurisdiction upon the courts of bankruptcy to adjudicate as bankrupts non-consenting partners who refuse to join in a bankruptcy petition is legislation not authorized by the Constitution of the United States the laws thereof and is in violation thereof as to the due process clause and the equal protection of the laws clause of the Constitution of the United States.

8. The Court erred in not sustaining the petitioner's motion to dismiss the said petition for the reason

No provision is made in the Bankruptcy Law of 1898 for the adjudication of a partnership upon the petition of one of the partners.

9. The Court erred in not sustaining the petitioner's motion to dismiss the said petition for the reason

That after a dissolution of a partnership by operation of law one of the surviving partners cannot institute bankruptcy proceedings in behalf of or against the partnership.

Wherefore your petitioner, feeling aggrieved because of such order, asks that the same may be revised in matter of law by your Honorable Court as provided in section 24b of the Bankruptcy Law of 1898 as amended and the rules and practice in such case made is provided.

GEO. R. MEEK,
Petitioner.

UNITED STATES OF AMERICA,
MIDDLE DISTRICT OF PENNSYLVANIA, } *ss.:*

George R. Meek, being duly sworn deposes and says that the facts set forth in the foregoing petition to revise are true.

Subscribed and sworn to before me this 26th day of October, 1922. } GEO. R. MEEK.

CLEMENT DALE,
(Seal) *Notary Public.*
Commission expires March 12, 1925.

Notice of the filing of this petition accepted, October 26, 1922.

S. D. GETTIG,
Attorney for Bankrupt Petitioner.

IN THE DISTRICT COURT OF THE UNITED STATES, FOR THE MIDDLE DISTRICT OF PENNSYLVANIA.

IN BANKRUPTCY. No. 4268.

In the Matter of the Centre County Banking Company, a Partnership, and John M. Shugert, Individually,

Bankrupts.

MOTION TO DISMISS PETITION TO REVISE IN MATTER OF LAW FILED BY GEORGE R. MEEK AND PROTEST AGAINST THE ALLOWANCE OF SAME.

(Filed November 2, 1922.)

To the Honorable, the Judges of the Circuit Court of Appeals of the Third Circuit of the United States:

The petition of John M. Shugert, above named, respectfully shows:

That the petition presented to your Honorable Court by George R. Meek to revise in matter of law the decree of the District Court of the United States in the above-stated case, as therein set forth, should not be allowed, but should be dismissed for the following reasons:

First.—That it is not true, as in said petition set forth, by the said George R. Meek, that this respondent on the eleventh day of July, 1922, filed a voluntary petition in bankruptcy in the District Court of the United States for the Middle District of Pennsylvania, but that said petition was filed in said Court on or about the thirtieth day of June, 1922.

Second.—That on the thirty-first day of July, 1922, the said George R. Meek filed an answer to the merits of said petition denying that he was a partner and also raising a question of law, namely, that he could not be brought within the jurisdiction of the said court as a partner, or in any other relation in said proceedings. That to the answer, so filed, there appeared as his counsel in said District Court, Harry Keller and Orvis and Zerby.

Third.—That subsequent to the filing of said answer and the appearance in said court generally by himself and his counsel, to wit, on or about the eighteenth day of August, 1922, as stated in the preceding paragraph, the said George R. Meek, filed a petition upon a motion to quash the subpœna served upon him.

Fourth.—That this respondent on or about the twenty-third day of August, 1922, filed in the said District Court a petition asking leave to amend the original petition in bankruptcy filed, of which Ellis L. Orvis, attorney for George R. Meek, accepted notice of filing and acknowledged receipt of copy of the proposed amendment. That the said George R. Meek filed no protest to the allowance of the amendment prayed for, nor did he file a new or supplemental answer within ten days after the allowance of said amendment, as provided by Rule 32 of the United States Equity Rules.

Fifth.—That the said District Court heard and disposed of at the same time the motion of the said George R. Meek to quash the subpœna, which had been issued and served on him, in pursuance to the original petition filed in the above-stated case and the amendment to said original petition, and thereupon on the fifteenth day of September, 1922, quashed the sub-

pœna served on the said Meek, allowing the amendment to the original petition, and directed the clerk to issue a subpœna, in accordance with the petition as amended.

Sixth.—That the said George R. Meek, so far as this respondent is informed, has never presented a petition to your Honorable Court for a revision as matter of law of the decree made by the said District Court on the fifteenth day of September, 1922, allowing said amendment, and under Section 8 of Rule 14 of this court, more than thirty days having elapsed, it is too late to attempt to revise said decree in this proceeding.

Seventh.—That the decree of the said District Court of October 20, 1922, which the said Meek prays may be revised by your Honorable Court, was based upon a petition of the said Meek to the said District Court, filed on or about the first day of October, 1922, wherein he prays the said court, upon motion, to dismiss the said petition in bankruptcy and set aside the subpœna issued under and in pursuance of the amended petition.

As a further reason why said petition should not be allowed, this respondent avers:

Eighth.—Because the order of the District Court of October 20, 1922, so far as the same relates to the amended petition allowed by the Court, is a confirmation of the former order of September 15, 1922, allowing said amendment, and is, therefore, not subject to revision under the Bankruptcy Act.

Ninth.—Because no hearing has yet been held by the District Court upon the question of the insolvency of the Centre County Banking Company, of which the

said George R. Meek is a partner, and said decree of October 20, 1922, having been made prior to any adjudication in bankruptcy against the said Meek, no material injury or rights, to which he may be entitled, have been thereby materially affected.

Tenth.—Because it is unusual and extraordinary that the petition should be allowed, based upon the decree made prior to an adjudication in bankruptcy.

Eleventh.—That said petition should not be allowed, because there is not attached thereto any certified copies of the records of the District Court in said proceeding, nor does it contain sufficient facts *prima facie* to justify an allowance of the same.

Twelfth.—Because Section 25 of the Bankruptcy Act provides for an appeal from a judgment, which may or may not adjudge the said Meek a bankrupt, and the said decree of October 20, 1922, is not such an interlocutory decree affecting the rights of the said Meek, as will move your Honorable Court to allow said petition.

Thirteenth.—Because this respondent, by his counsel, S. D. Gettig, was requested by Ellis L. Orvis, counsel for George R. Meek, on the twenty-sixth day of October, 1922, to accept notice of the filing of the petition of said Meek in this court, which notice was accordingly accepted, but your respondent and his said counsel did not receive ten days previous notice of the time of the presentation of said petition to your Honorable Court, as required by Section 8 of Rule 14 of this court.

WHEREFORE, this respondent protests and prays the said court that the petition of the said George R. Meek be not allowed, but that the same be dismissed with costs to the said petitioner.

JNO. M. SHUGERT,
Respondent.

S. D. GETTIG,
Attorney for John M. Shugert,
East High Street,
Bellefonte, Penna.

N. B. SPANGLER,
Attorney for Creditors' Committee of Centre County Banking Company,
Crider's Exchange Building,
Bellefonte, Penna.

STATE OF PENNSYLVANIA, }
COUNTY OF CENTRE, } *ss.:*

I, JOHN M. SHUGERT, the respondent mentioned and described in the foregoing petition, do hereby make solemn oath that the statements of fact therein contained are true, according to the best of my knowledge, information and belief.

Sworn and subscribed before me this thirty-first day of October, A. D. 1922. } JNO. M. SHUGERT.

ELIZABETH C. WALKER,
(Seal) *Notary Public.*
My commission expires March 6, 1925.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS, FOR THE THIRD CIRCUIT.

October Term, 1922. No. 2945.

George R. Meek,
Petitioner,

v.

Centre County Banking Company, a Partnership, and John M. Shugert, Individually, Bankrupts,
Respondents.

ANSWER

TO PETITION OF GEORGE R. MEEK TO REVISE IN MATTER OF LAW DECREE OF THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF PENNSYLVANIA.

(Filed November 18, 1922.)

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Third Circuit:

The answer of JOHN M. SHUGERT, above named, to the petition of George R. Meek to revise in matter of law decree of the District Court of the United States for the Middle District of Pennsylvania, respectfully represents:

First.—Said decree should not be revised for the following reasons:

The original petition, together with schedules thereto attached, in bankruptcy, were filed by this respondent in the Middle District of Pennsylvania, on or about the thirtieth day of June, 1922, instead of July 11, 1922, as set forth in the petition of the said Meek, to which said petition the said Meek on or about the thirty-first day of July, 1922, filed an answer to the merits of said petition, denying that he

was a partner of the Centre County Banking Company and raising a question of law, namely, that he could not be brought within the jurisdiction of the said court, as a partner, or in any other relation in said proceedings. That to the answer so filed there appeared as his counsel for and on behalf of the said George R. Meek in said District Court, Harry Keller, and Orvis and Zerby. That subsequent to the filing of said answer and the appearance in said Court generally by himself and by his said counsel, to wit, on or about the eighteenth day of August, 1922, the said George R. Meek presented a petition to the said District Court, upon a motion to quash the subpœna served upon him, in pursuance to the original petition in bankruptcy filed by myself individually and on behalf of said partnership. That this respondent on or about the twenty-third day of August, 1922, filed in said District Court a petition asking leave to amend the original petition in bankruptcy, notice of which filing was accepted by Ellis L. Orvis, attorney for George R. Meek, who at the same time acknowledged receipt of copy of petition for the proposed amendment. That the said George R. Meek filed no protest to the allowance of the amendment prayed for, nor answer thereto, as provided by Rule 32 of the General Rules of Practice for the Courts of Equity of the United States. That the said District Court heard and disposed of at the same time the motion of the said George R. Meek to quash the subpœna served upon him, in pursuance of the original petition in bankruptcy filed by this respondent, and the petition asking leave to amend the original petition in bankruptcy, and thereupon on the fifteenth day of September, 1922, the said Court, with reference to said motion and said amendment, made the following order:

"September 15th, 1922, after argument on the showing made and on due consideration, the Court being satisfied that the subpœna issued was not in conformity with the initial petition filed, the subpœna is quashed.

"The amendment of the original petition as now presented is allowed and the Clerk is directed to issue a subpœna as prayed for in the petition as amended.

"Service of subpœna to be made on Andrew Breeze, if personal service cannot be obtained on him, by publishing this order together with such subpœna in the *Keystone Gazette*, a newspaper published at Bellefonte, in said district, for two consecutive weeks; the last of said publication to be made on or before the 10th day of October, 1922, and by mailing copy of this order and subpœna, to the last place of abode of Andrew Breeze, to wit, Downingtown, Penna., in the Eastern District of Pennsylvania on or before the date of the first publication.

"By THE COURT,
"Charles B. Witmer,
"U. S. Dist. Judge."

Second.—That the said George R. Meek has never presented a petition to your Honorable Court for a revision as matter of law of the order and decree made by the said District Court on the fifteenth day of September, 1922, above quoted, allowing said amendment, and under Section 8 of Rule 14 of this Court, more than thirty days having elapsed, said decree will not now be revised in this proceeding.

Third.—Because the decree of the District Court of October 20, 1922, which the said petitioner prays may be revised by your Honorable Court, was made in pursuance of a petition of the said Meek to the said District Court, filed on or about the first day of October, 1922, wherein he prays the said Court, upon motion, to dismiss the said petition in bankruptcy as amended and

allowed by the said Court, as above stated, and set aside the subpœna issued under and in pursuance of the said amended petition and served upon the said Meek, which was an attempt on the part of the said George R. Meek to have the said District Court revise its former decree of September 15, 1922.

Fourth.—Because this Court has no power or authority under the present proceedings to revise as a matter of law the decree of the District Court of October 20, 1922, so as in any manner to affect the prior decree made by said Court on September 15, 1922, allowing said amended petition, in pursuance of which the subpœna was served on the said Meek, to show cause why he should not be declared a bankrupt.

Fifth.—Because the order of the District Court of October 20, 1922, so far as the same relates to the amended petition allowed by the Court, filed by this respondent, is a confirmation of the former order of said Court of September 15, 1922, allowing said amendment, and is, therefore, not subject to revision under the Bankruptcy Act, so as to annul or modify the former order made by said Court.

Sixth.—Because no hearing has yet been held by the District Court, upon the question of the solvency of the Centre County Banking Company, nor has it yet been determined whether or not the said George R. Meek is in fact a partner in said Centre County Banking Company and said decree of October 20, 1922, is not an interlocutory decree of such a definite character, as will move your Honorable Court to revise the same.

Seventh.—Because orders and decrees made by a Court of Bankruptcy, prior to an adjudication, are not of such a definite character as will prejudice the rights of an alleged bankrupt, and it is unusual and extraordinary to revise as a matter of law such order or decree.

Eighth.—Because Section 25 of the Bankruptcy Act provides for an appeal from a judgment, which may or may not adjudge the said petitioner a bankrupt, and said decree of October 20, 1922, is not such an interlocutory decree affecting his rights, as will move your Honorable Court to revise the same.

WHEREFORE, this respondent protests and prays the said Court to dismiss the petition of the said Meek at his cost.

JNO. M. SHUGERT.

S. D. GETTIG,
Attorney for John M. Shugert,
11 East High Street,
Bellefonte, Pa.

N. B. SPANGLER,
Attorney for Creditors' Committee of Centre County Banking Company,
Crider's Exchange Bldg.,
Bellefonte, Pa.

STATE OF PENNSYLVANIA, } *ss.:*
COUNTY OF CENTRE, }

JOHN M. SHUGERT, the respondent mentioned and described in the foregoing answer, does hereby make solemn oath that the statements of fact therein contained are true, according to the best of my knowledge, information and belief.

Sworn and subscribed before me this 16th day of November, A. D. 1922. } JNO. M. SHUGERT.

ELIZABETH C. WALKER,
(Seal) *Notary Public.*
My commission expires March 6, 1925

IN THE DISTRICT COURT OF THE UNITED STATES, FOR THE MIDDLE DISTRICT OF PENNSYLVANIA.

IN BANKRUPTCY. No. 4268.

In the Matter of the Centre County Banking Company, a Partnership, and John M. Shugert, Individually,

Bankrupts.

PETITION OF FLORENCE F. DALE TO REVISE IN MATTER OF LAW.

(Filed October 30, 1922.)

To the Honorable, the Judges of the Circuit Court of Appeals of the Third Circuit of the United States:

Your petitioner respectfully shows:

That one, John M. Shugert, on the eleventh day of July, 1922, filed a voluntary petition in bankruptcy in the District Court of the United States for the Middle District of Pennsylvania, in which he set forth *inter alia* that he and others, including your petitioner, were partners trading as Centre County Banking Company and that he, the said John M. Shugert, was insolvent and that said partnership was insolvent, that said petition contained a prayer that the said Shugert and said partnership should be adjudicated bankrupt.

Thereafter the said Shugert filed an amended petition by leave of court in which it is set forth, *inter alia:*

> "That your petitioner (the said John M. Shugert) and George R. Meek, Mary C. Harris, Florence F. Dale and Andrew Breeze, who survived Lavina Catherine Harris, now deceased, also a partner in her lifetime, are and have been partners under the style of Centre County Banking Company which partnership has had its principal place of business at the Borough of Bellefonte in the County

of Centre in said district for the greater portion of the six months immediately preceding the filing of this petition; that said partnership is insolvent and owes debts in excess of one thousand dollars ($1,000.00). That the said Lavina Catherine Harris died on or about the tenth day of January, A. D. 1921, and her estate will be administered by the Orphans' Court of Centre County upon the filing of the account of John Blanchard and Sarah C. Brown, her executors. That such partnership and your petitioner are willing to surrender its and his property for the benefit of its and his creditors respectively except such as is exempt by law and desires to obtain the benefits of the Bankruptcy Law of 1898 as amended."

Said amended petition then sets out the residences of your petitioner and other persons named in said petition and avers that none of them are wage earners or persons engaged chiefly in farming or the tillage of the soil and as individuals owe debts which they are unable to pay in full. That there has been no final settlement of said partnership doing business as Centre County Banking Company; and there are debts of said partnership which are unsettled and unpaid amounting to more than one thousand dollars ($1000). That each of said partners is insolvent and they are jointly or severally unable to pay said partnership debts.

Said petition then sets forth that the schedules of the said John M. Shugert, individually and as represented by him, the schedules of said partnership are attached to said petition.

The prayer of said amended petition is:

"Wherefore your petitioner prays that such partnership as well as George R. Meek, Mary C. Harris, Florence F. Dale, Andrew Breeze and your petitioner, surviving partners of Lavina Catherine Harris, deceased, may as individuals as well as said firm be adjudged bankrupt within the purview of

petitioner's motion to dismiss said amended petition in bankruptcy and erred in making the order denying the motion filed by this petitioner to dismiss said petition in bankruptcy.

Petitioner here assigns for error more particularly the several errors she believes the Court made in the order of October 20, 1922.

1. The Court erred in not sustaining the petition to dismiss upon the ground that

> Said Court was without jurisdiction upon the voluntary petition of John M. Shugert to issue a subpœna requiring this respondent to show cause why she should not be adjudged bankrupt.

2. The Court erred in not sustaining petitioner's motion to dismiss said petition for the reason

> That said Court was without jurisdiction upon the voluntary petition of said John M. Shugert to adjudicate this respondent a bankrupt.

3. The Court erred in not sustaining the petitioner's motion to dismiss the said petition for the reason

> That an involuntary petition in bankruptcy can only be instituted against this respondent by the required number of creditors upon proof of her having committed one of the acts of bankruptcy specified in the act.

4. That the Court erred in not sustaining the petitioner's motion to dismiss the said petition for the reason

> That the said Court had no jurisdiction to allow the amended petition of said John M. Shugert.

5. The Court erred in not sustaining the petitioner's motion to dismiss the said petition for the reason

That a bankruptcy proceeding cannot be instituted against a partnership by one partner where it appears upon the face of the petition that before the petition in bankruptcy was filed the partnership was dissolved by the death of one of the partners and the estate of such deceased partner is in process of administration in the Orphans' Court of the proper county.

6. The Court erred in not sustaining the petitioner's motion to dismiss the said petition for the reason

That the Bankruptcy Act confers no power or authority on one partner to file a petition in bankruptcy in the partnership name where one or more of the remaining partners do not assent or consent thereto.

7. The Court erred in not sustaining the petitioner's motion to dismiss the said petition for the reason

That so much of General Order No. VIII of the Supreme Court as attempts to confer jurisdiction upon the courts of bankruptcy to adjudicate as bankrupts non-consenting partners who refuse to join in a bankruptcy petition is legislation not authorized by the Constitution of the United States the laws thereof and is in violation thereof as to the due process clause and the equal protection of the laws clause of the Constitution of the United States.

8. The Court erred in not sustaining the petitioner's motion to dismiss the said petition for the reason

No provision is made in the Bankruptcy Law of 1898 for the adjudication of a partnership upon the petition of one of the partners.

9. The Court erred in not sustaining the petitioner's motion to dismiss the said petition for the reason

That after a dissolution of a partnership by operation of law one of the surviving partners cannot institute bankruptcy proceedings in behalf of or against the partnership.

Wherefore your petitioner, feeling aggrieved because of such order, asks that the same may be revised in matter of law by your Honorable Court as provided in section 24b, of the Bankruptcy Law of 1898 as amended and the rules and practice in such case made is provided.

FLORENCE F. DALE,
Petitioner.

UNITED STATES OF AMERICA,
MIDDLE DISTRICT OF PENNSYLVANIA, } *ss.:*

Florence F. Dale, being duly sworn, deposes and says that the facts set forth in the foregoing petition to revise are true.

Subscribed and sworn to before me this 28th day of October, 1922. } FLORENCE F. DALE.

JANE M. GORMAN,
(Seal) *Notary Public.*
Commission expires February 11, 1925.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS, FOR THE THIRD CIRCUIT.

October Term, 1922. No. 2946.

Florence F. Dale,
Petitioner,

v.

Centre County Banking Company, a Partnership, and John M. Shugert, Individually, Bankrupts,
Respondents.

ANSWER

TO PETITION OF FLORENCE F. DALE TO REVISE IN MATTER OF LAW DECREE OF THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF PENNSYLVANIA.

(Filed November 18, 1922.)

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Third Circuit:

The answer of JOHN M. SHUGERT, above named, to the petition of Florence F. Dale to revise in matter of law decree of the District Court of the United States for the Middle District of Pennsylvania, respectfully represents:

First.—Said decree should not be revised for the following reasons:

The original petition, together with schedules thereto attached, in bankruptcy, were filed by this respondent in the Middle District of Pennsylvania, on or about the thirtieth day of June, 1922, instead of July 11, 1922, as set forth in the petition of the said Dale, to which said petition the said Florence F. Dale on or

about the thirty-first day of July, 1922, filed an answer to the merits of said petition, denying that she was a partner of the Centre County Banking Company and raising a question of law, namely, that she could not be brought within the jurisdiction of the said Court, as a partner, or in any other relation in said proceedings. That to the answer so filed there appeared as her counsel for and on behalf of the said Florence F. Dale in said District Court, Richard L. Bigelow. That subsequent to the filing of said answer and the appearance in said court generally by herself and by her said counsel, to wit, on or about the eighteenth day of August, 1922, the said Florence F. Dale presented a petition to the said District Court, upon a motion to quash the subpœna served upon her, in pursuance to the original petition in bankruptcy filed by myself individually and on behalf of said partnership. That this respondent on or about the twenty-third day of August, 1922, filed in said District Court, a petition asking leave to amend the original petition in bankruptcy, notice of which filing was accepted by Ellis L. Orvis, attorney for Florence F. Dale, who at the same time acknowledged receipt of copy of petition for the proposed amendment. That the said Florence F. Dale filed no protest to the allowance of the amendment prayed for, nor answer thereto, as provided by Rule 32 of the General Rules of Practice for the Courts of Equity of the United States. That the said District Court heard and disposed of at the same time the motion of the said Florence F. Dale to quash the subpœna served upon her, in pursuance of the original petition in bankruptcy filed by this respondent, and the petition asking leave to amend the original petition in bankruptcy, and thereupon on the fifteenth day of September, 1922, the said Court, with reference to said motion and said amendment, made the following order:

"September 15th, 1922, after argument on the showing made and on due consideration, the Court being satisfied that the subpœna issued was not in conformity with the initial petition filed, the subpœna is quashed.

"The amendment of the original petition as now presented is allowed and the Clerk is directed to issue a subpœna as prayed for in the petition as amended.

"Service of subpœna to be made on Andrew Breeze, if personal service cannot be obtained on him, by publishing this order together with such subpœna in the *Keystone Gazette*, a newspaper published at Bellefonte, in said District, for two consecutive weeks; the last of said publication to be made on or before the 10th day of October, 1922, and by mailing copy of this order and subpœna, to the last place of abode of Andrew Breeze, to wit, Downingtown, Penna., in the Eastern District of Pennsylvania on or before the date of the first publication.

"By The Court.

"Charles B. Witmer,

"U. S. Dist. Judge."

Second.—That the said Florence F. Dale has never presented a petition to your Honorable Court for a revision as matter of law of the order and decree made by the said District Court, on the fifteenth day of September, 1922, above quoted, allowing said amendment, and under Section 8 of Rule 14 of this Court, more than thirty days having elapsed, said decree will not now be revised in this proceeding.

Third.—Because the decree of the District Court of October 20, 1922, which the said petitioner prays may be revised by your Honorable Court, was made in pursuance of a petition of the said Florence F. Dale to the said District Court, filed on or about the first day of October, 1922, wherein she prays the said Court,

upon motion, to dismiss the said petition in bankruptcy as amended and allowed by the said Court, as above stated and set aside the subpœna issued under and in pursuance of the said amended petition and served upon the said Florence F. Dale, which was an attempt on the part of the said Florence F. Dale to have the said District Court revise its former decree of September 15, 1922.

Fourth.—Because this court has no power or authority under the present proceedings to revise as a matter of law the decree of the District Court of October 20, 1922, so as in any manner to affect the prior decree made by said Court on September 15, 1922, allowing said amended petition, in pursuance of which the subpœna was served on the said Florence F. Dale, to show cause why she should not be declared a bankrupt.

Fifth.—Because the order of the District Court of October 20, 1922, so far as the same relates to the amended petition allowed by the Court, filed by this respondent, is a confirmation of the former order of said Court of September 15, 1922, allowing said amendment, and is, therefore, not subject to revision under the Bankruptcy Act, so as to annul or modify the former order made by said Court.

Sixth.—Because no hearing has yet been held by the District Court upon the question of the solvency of the Centre County Banking Company nor has it yet been determined whether or not the said Florence F. Dale is in fact a partner in said Centre County Banking Company and said decree of October 20, 1922, is not an interlocutory decree of such a definite character, as will move your Honorable Court to revise the same.

Seventh.—Because orders and decrees made by a Court of Bankruptcy, prior to an adjudication, are not of such a definite character as will prejudice the rights of an alleged bankrupt, and it is unusual and extraordinary to revise as a matter of law such order or decree.

Eighth.—Because Section 25 of the Bankruptcy Act provides for an appeal from a judgment, which may or may not adjudge the said petitioner a bankrupt, and said decree of October 20, 1922, is not such an interlocutory decree affecting her rights, as will move your Honorable Court to revise the same.

Ninth.—Because no notice was given by Florence F. Dale, the above-named petitioner, either to this respondent or his counsel, of the presentation to your Honorable Court of her petition asking for a revision as a matter of law of the decree of said District Court, and your respondent and his counsel had no notice of the same until received by the Clerk of your Honorable Court.

WHEREFORE, this respondent protests and prays the said Court to dismiss the petition of the said Florence F. Dale at her cost.

JNO. M. SHUGERT.

S. D. GETTIG,
Attorney for John M. Shugert,
11 East High Street,
Bellefonte, Pa.

N. B. SPANGLER,
Attorney for Creditors' Committee of Centre County Banking Company,
Crider's Exchange Bldg.,
Bellefonte, Pa.

STATE OF PENNSYLVANIA, }
COUNTY OF CENTRE, } *ss.:*

JOHN M. SHUGERT, the respondent mentioned and described in the foregoing answer, does hereby make solemn oath that the statements of fact therein contained are true, according to the best of my knowledge, information and belief.

Sworn and subscribed before me this 16th day of November, A. D. 1922. } JNO. M. SHUGERT.

ELIZABETH C. WALKER,
(Seal) *Notary Public.*

My commission expires March 6, 1925

IN THE DISTRICT COURT OF THE UNITED STATES, FOR THE MIDDLE DISTRICT OF PENNSYLVANIA.

IN BANKRUPTCY. No. 4268.

In the Matter of the Centre County Banking Company, a Partnership, and John M. Shugert, Individually,
Bankrupts.

PETITION TO REVISE IN MATTER OF LAW.
(Filed January 6, 1923.)

To the Honorable the Judges of the Circuit Court of Appeals of the Third Circuit of the United States:

Your petitioner respectfully shows:

That one John M. Shugert on the eleventh day of July, 1922, filed a voluntary petition in bankruptcy in the District Court of the United States for the Middle District of Pennsylvania in which he set forth *inter alia* that he and others including your petitioner were partners trading as Centre County Banking Company and that he the said John M. Shugert was insolvent and that said partnership was insolvent, that said petition contained a prayer that the said Shugert and said partnership should be adjudicated bankrupt.

Thereafter the said Shugert filed an amended petition by leave of court in which it is set forth, *inter alia:*

> "That your petitioner (the said John M. Shugert) and George R. Meek, Mary C. Harris, Florence F. Dale and Andrew Breeze who survived Lavina Catherine Harris, now deceased, also a partner in her lifetime, are and have been partners under the style of Centre County Banking Company which partnership has had its principal place of business at the Borough of Bellefonte in the

County of Centre in said district for the greater portion of the six months immediately preceding the filing of this petition; that said partnership is insolvent and owes debts in excess of one thousand dollars ($1,000.00). That the said Lavina Catherine Harris died on or about the tenth day of January, A. D. 1921, and her estate will be administered by the Orphans' Court of Centre County upon the filing of the account of John Blanchard and Sarah C. Brown, her executors. That such partnership and your petitioner are willing to surrender its and his property for the benefit of its and his creditors respectively except such as is exempt by law and desires to obtain the benefits of the bankruptcy law of 1898 as amended."

Said amended petition then sets out the residences of your petitioner and other persons named in said petition and avers that none of them are wage earners or persons engaged chiefly in farming or the tillage of the soil and as individuals owe debts which they are unable to pay in full. That there has been no final settlement of said partnership doing business as Centre County Banking Company; and there are debts of said partnership which are unsettled and unpaid amounting to more than one thousand dollars ($1000). That each of said partners is insolvent and they are jointly or severally unable to pay said partnership debts.

Said petition then sets forth that the schedules of the said John M. Shugert individually and as represented by him, the schedules of said partnership are attached to said petition.

The prayer of said amended petition is:

"Wherefore your petitioner prays that such partnership as well as George R. Meek, Mary C. Harris, Florence F. Dale, Andrew Breeze and your petitioner, surviving partners of Lavina Catherine Harris, deceased, may as individuals as well as said firm be adjudged bankrupt within the purview of such bankruptcy law of 1898 and that service of

this petition with a subpœna be made upon George R. Meek, Mary C. Harris, Florence F. Dale and Andrew Breeze, such non-consenting partners and that proceedings be had as are provided in said law and General Order No. VIII of the Supreme Court and as the court may order."

That your petitioner appeared specially in answer to said subpœna and only for the purpose of moving to dismiss said amended petition in bankruptcy for the following reasons:

(A) That said court was without jurisdiction upon the voluntary petition of John M. Shugert to issue a subpœna requiring this respondent to show cause why he should not be adjudged bankrupt.

(B) That said court was without jurisdiction upon the voluntary petition of said John M. Shugert to adjudicate this respondent a bankrupt.

(C) That an involuntary petition in bankruptcy can only be instituted against this respondent by the required number of creditors upon proof of his having committed one of the acts of bankruptcy specified in the act.

(D) That the said court had no jurisdiction to allow the amended petition of said John M. Shugert.

(E) That a bankruptcy proceeding cannot be instituted against a partnership by one partner where it appears upon the face of the petition that before the petition in bankruptcy was filed the partnership was dissolved by the death of one of the partners and the estate of such deceased partner in process of administration in the Orphans' Court of the proper county.

(F) That the Bankruptcy Act confers no power or authority on one partner to file a petition in bankruptcy in the partnership name where one or more of the remaining partners do not assent or consent thereto.

(G) That so much of General Order No. VIII of the Supreme Court as attempts to confer jurisdiction upon the courts of bankruptcy to adjudicate as bankrupts non-consenting partners who refuse to join in a bankruptcy petition is legislation not authorized by the Constitution of the United States and the laws thereof and is in violation thereof as to the due process clause and the equal protection of the law clause of the Constitution of the United States.

(H) No provision is made in the Bankruptcy Law of 1898 for the adjudication of partnership upon the petition of one of the partners without the consent of all of the partners.

(I) That after a dissolution of a partnership by operation of law one of the surviving partners cannot institute bankruptcy proceedings in behalf of or against the partnership.

That after hearing argument thereon the District Court for the said Middle District made the following order therein:

"December 8, 1922. The motion to dismiss is denied.

"CHARLES B. WITMER,
"District Judge."

That said order was erroneous in matter of law in that the District Court of the United States for said Middle District of Pennsylvania, erred in not sustain-

ing petitioner's motion to dismiss said amended petition in bankruptcy and erred in making the order denying the motion filed by this petitioner to dismiss said petition in bankruptcy.

Petitioner here assigns for error more particularly the several errors he believes the Court made in the order of October 20, 1922.

1. The Court erred in not sustaining the petition to dismiss upon the ground that

> Said Court was without jurisdiction upon the voluntary petition of John M. Shugert to issue a subpœna requiring this respondent to show cause why he should not be adjudged bankrupt.

2. The Court erred in not sustaining petitioner's motion to dismiss said petition for the reason

> That said Court is without jurisdiction upon the voluntary petition of said John M. Shugert to adjudicate this respondent a bankrupt.

3. The Court erred in not sustaining the petitioner's motion to dismiss the said petition for the reason

> That an involuntary petition in bankruptcy can only be instituted against this respondent by the required number of creditors upon proof of his having committed one of the acts of bankruptcy specified in the act.

4. That the Court erred in not sustaining the petitioner's motion to dismiss the said petition for the reason

> That the said Court had no jurisdiction to allow the amended petition of said John M. Shugert.

5. The Court erred in not sustaining the petitioner's motion to dismiss the said petition for the reason

That a bankruptcy proceeding cannot be instituted against a partnership by one partner where it appears upon the face of the petition that before the petition in bankruptcy was filed the partnership was dissolved by the death of one of the partners and the estate of such deceased partner is in process of administration in the Orphans' Court of the proper county.

6. The Court erred in not sustaining the petitioner's motion to dismiss the said petition for the reason

That the Bankruptcy Act confers no power or authority on one partner to file a petition in bankruptcy in the partnership name where one or more of the remaining partners do not assent or consent thereto.

7. The Court erred in not sustaining the petitioner's motion to dismiss the said petition for the reason

That so much of General Order No. VIII of the Supreme Court as attempts to confer jurisdiction upon the courts of bankruptcy to adjudicate as bankrupts non-consenting partners who refuse to join in a bankruptcy petition is legislation not authorized by the Constitution of the United States the laws thereof and is in violation thereof as to the due process clause and the equal protection of the laws clause of the Constitution of the United States.

8. The Court erred in not sustaining the petitioner's motion to dismiss the said petition for the reason

No provision is made in the Bankruptcy Law of 1898 for the adjudication of a partnership upon the petition of one of the partners.

9. The Court erred in not sustaining the petitioner's motion to dismiss the said petition for the reason

That after a dissolution of a partnership by operation of law one of the surviving partners cannot institute bankruptcy proceedings in behalf of or against the partnership.

Wherefore your petitioner feeling aggrieved because of such order asks that the same may be revised in matter of law by your Honorable Court as provided in Section 24b of the Bankruptcy Law of 1898 as amended and the rules and practice in such case made is provided.

ANDREW BREESE,
Petitioner.

M. C. RHONE,
Attorney for Petitioner.

UNITED STATES OF AMERICA,
DISTRICT OF NEW JERSEY, } *ss.:*

Andrew Breese, being duly sworn, deposes and says, that the facts set forth in the foregoing petition to revise are true.

Subscribed and sworn to before me this 18th day of December, 1922. } ANDREW BREESE.

DUDLEY R. JANVIER,
(Seal) *Notary Public of New Jersey.*

1923, January 16. Leave granted to file this petition, without to respondent to receive at this hearing the question or matter they oppose to this petition.

WOODBY,
Clerk.

IN THE DISTRICT COURT OF THE UNITED STATES, FOR THE MIDDLE DISTRICT OF PENNSYLVANIA.

IN BANKRUPTCY. No. 4268.

In the Matter of the Centre County Banking Company, a Partnership, and John M. Shugert, Individually,

Bankrupts.

ANSWER TO PETITION TO REVISE IN THE MATTER OF ANDREW BREEZE.

(Filed January 8, 1923.)

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Third Circuit:

Your respondent in answer to the petition of Andrew Breeze to revise in matter of law a decree of the District Court of the United States for the Middle District of Pennsylvania, respectfully shows:

That it is true, as set forth, that a petition was filed in bankruptcy by this respondent, on behalf of the Centre County Banking Company and its members or partners on the eleventh day of July, 1922, as set forth in the petition to revise.

That it is also true that said petition was amended by leave of Court, but the amendment, as set forth in the petition of Andrew Breeze to revise, is not correct. That two paragraphs were added to the original petition to amend, the one to the body of the petition, and the other, the prayer, which said paragraphs are as follows:

> "That there has been no final settlement of the partnership business of said partners, doing business as the Centre County Banking Company; and there are debts of said partnership, which are

unsettled and unpaid, amounting to more than One Thousand Dollars. That each of said partners is insolvent and they are jointly or severally unable to pay said partnership debts."

"WHEREFORE, your petitioner prays that such partnership, as well as George R. Meek, Mary C. Harris, Florence F. Dale, Andrew Breeze, and your petitioner, surviving partners of Lavinia Catherine Harris, deceased, may each individually, as well as said firm, be adjudged bankrupt within the purview of such Bankruptcy Law of 1898, as amended, and that service of this petition, with a subpœna, be made upon George R. Meek, Mary C. Harris, Florence F. Dale and Andrew Breeze, such non-consenting partners, and that proceedings be had as are provided in said law and General Order VIII of the Supreme Court, and as the Court may order."

That a copy of the petition as amended by the District Court is hereto attached and made a part hereof, and marked "Respondent's Exhibit 'A.'"

That subsequent to the amendment of said petition as originally filed, the same was docketed in the District Court as follows:

"IN THE DISTRICT COURT OF THE UNITED STATES, FOR THE MIDDLE DISTRICT OF PENNSYLVANIA.

In the Matter of John M. Shugert, George R. Meek, Mary C. Harris, Florence F. Dale, Andrew Breeze, surviving partners of Lavina Catherine Harris, deceased, individually, and trading as Centre County Banking Company.	No. 4268 IN BANKRUPTCY."

That in pursuance of said amended petition a subpœna was regularly issued by the District Court and constructive service had upon the said Andrew Breeze,

by advertisement, as required by law and the rules of said Court, and upon due proof of same, the order of December 8, 1922, complained of, was made by the District Court. That such constructive service was had for the reason that the said Andrew Breeze is not a resident of the Middle District of Pennsylvania and was not at the time of the filing of the petition in bankruptcy, and his actual residence is not known to your petitioner, although he appeared specially in this proceeding.

Your respondent denies that the reasons filed by him in his petition to revise, indicated by the letters A, B, C, D, E, F, G, H and I, are good in law, and avers that the said petition should be dismissed.

This respondent further avers that the further reasons filed by the said Andrew Breeze on its petition to revise as a matter of law, numbered 1, 2, 3, 4, 5, 6, 7, 8 and 9, are not good in law, and that the said Court should dismiss the said petition for the following reasons, to wit:

First.—Because there has been no order made by the District Court adjudicating or refusing to adjudicate the Centre County Banking Company, and the copartners composing the same, bankrupts, and the said petitioner will not be prejudiced in any manner by the dismissal of this petition, for the reason that the same questions here raised by him can be raised and adjudicated by this Court on appeal, in case the District Court should hereafter by order or decree adjudge the said Andrew Breeze a bankrupt as a copartner of the Centre County Banking Company.

Second.—Because the United States Circuit Court of Appeals will not hear a petition to revise an interlocutory decree, where the same question can later be raised without prejudice to the petitioner.

Third.—Because the said Court will not revise as matter of law an interlocutory decree where the same does not prejudice the rights of the petition and where the same question can properly be raised on a subsequent appeal in the same proceeding.

Fourth.—Because a petition to revise an order in a bankruptcy proceeding, made prior to an adjudication of bankruptcy or a refusal of an adjudication in bankruptcy, is almost an unheard of proceeding and is unusual and without authority of law.

WHEREUPON, this respondent prays the said Court that the said petition to revise, filed by the said Andrew Breeze, be dismissed at the costs of the petitioner, and that such other and further order in the premises may be made as to justice and equity may appertain.

JNO. M. SHUGERT.

STATE OF PENNSYLVANIA, } *ss.:*
COUNTY OF CENTRE, }

Before me, a notary public in and for said State and County, personally appeared JOHN M. SHUGERT, the respondent above named, who being duly sworn according to law, doth depose and say that the facts set forth in the foregoing answer are true and correct to the best of his knowledge, information and belief.

Sworn and subscribed before me this 5th day of January, A. D. 1923. } JNO. M. SHUGERT.

ELIZABETH C. WALKER.
(Seal) *Notary Public.*

My commission expires March 6, 1925.

RESPONDENT'S EXHIBIT "A."

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF PENNSYLVANIA.

In the Matter of the Centre County Banking Company, a partnership, and John M. Shugert, individually,
Bankrupts.

No. 4268
IN BANKRUPTCY.

To the Honorable Charles B. Witmer, Judge of the District Court of the United States for the Middle District of Pennsylvania:

The petition of John M. Shugert of the Borough of Bellefonte, in the County of Centre, in said district, of the occupation of private banking, respectfully shows:

That your petitioner and George R. Meek, Mary C. Harris, Florence F. Dale, and Andrew Breeze, who survived Lavinia Catherine Harris, now deceased, also a partner in her lifetime, are and have been partners under the style of Centre County Banking Company, which partnership has had its principal place of business at the Borough of Bellefonte, in the County of Centre, in said District, for the greater portion of the six months immediately preceding the filing of this petition; and that said partnership is insolvent and owes debts in excess of one thousand dollars ($1000). That the said Lavinia Catherine Harris died on or about the tenth day of January, A. D. 1921, and her estate will be administered by the Orphans' Court of Centre County upon the filing of the account of John Blanchard and Sarah C. Brown, her executors.

That such partnership and your petitioner are willing to surrender its and his property for the benefit of

its and his creditors, respectively, except such as is exempt by law, and desire to obtain the benefits of the bankruptcy law of 1898, as amended.

That the said George R. Meek, whose residence is in the Borough of Bellefonte, in the middle district of Pennsylvania, Mary C. Harris, whose residence is in the said Borough, in said district, Florence F. Dale, whose residence is in the City of Hazleton, in the eastern district of Pennsylvania, and Andrew Breeze, whose residence is in the Borough of Downingtown, in the eastern district of Pennsylvania, have not offered to join in said petition nor is your petitioner informed of their intention in said matter; that said parties are neither wage earners nor persons engaged chiefly in farming or the tillage of the soil, and as individuals owe debts which they are unable to pay in full.

That there has been no final settlement of the partnership business of said partners, doing business as the Centre County Banking Company; and there are debts of said partnership, which are unsettled and unpaid, amounting to more than One Thousand Dollars. That each of said partners is insolvent, and they are jointly or severally unable to pay said partnership debts.

That the schedule hereto annexed marked A, and verified by your petitioner's oath, contains a full and true statement of all the debts of said partnership, and (so far as it is possible to ascertain) the names and residences of its creditors, and such further statements concerning said debts as are required by said law.

That the schedule hereto annexed marked B, and verified by your petitioner's oath, contains an accurate inventory of all of the property of said partnership, both real and personal, and such further statements concerning said property as are required by said law.

That the schedule hereto annexed marked C, and verified by the oath of your petitioner contains a full

and true statement of all of his individual debts, and (so far as it is possible to ascertain) the names and places of residence of his individual creditors, and such further statements concerning said debts as are required by said law.

That the schedule hereto annexed marked D, and verified by the oath of your petitioner contains an accurate inventory of all of his individual property, both real and personal, and such further statements concerning said property as is required by said law.

Wherefore, your petitioner prays that such partnership, as well as George R. Meek, Mary C. Harris, Florence F. Dale, Andrew Breeze, and your petitioner, surviving partners of Lavinia Catherine Harris, deceased, may each individually, as well as said firm, be adjudged bankrupt within the purview of such bankruptcy law of 1898, as amended, and that service of this petition, with a subpœna, be made upon George R. Meek, Mary C. Harris, Florence F. Dale and Andrew Breeze, such non-consenting partners, and that proceedings be had as are provided in said law and General Order VIII of the Supreme Court, and as the Court may order.

JNO. M. SHUGERT,
Petitioner.

S. D. GETTIG,
Attorney for Petitioner.
Bellefonte, Pa.

UNITED STATES OF AMERICA,
MIDDLE DISTRICT OF PENNSYLVANIA, } *ss.:*

I, John M. Shugert, the petitioning debtor mentioned and described in the foregoing petition, do hereby make solemn oath that the statements contained therein are true according to the best of my knowledge, information and belief.

Subscribed and sworn to before me this 22nd day of Aug., 1922. } JNO. M. SHUGERT.

ELIZABETH C. WALKER.
(Seal) *Notary Public.*

My commission expires March 6, 1925.

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT, MARCH TERM, 1923

No. 2945 (List No. 6)

GEORGE R. MEEK, Petitioner,

vs.

CENTRE COUNTY BANKING CO. et al., Bankrupts, Respondents

ORDER ASSIGNING JUDGE—Filed March 7, 1923

Petition from the District Court of the United States for the Middle District of Pennsylvania

And now, to-wit this seventh day of March A. D. 1923, it is ordered that Hon. Charles L. McKeehan, District Judge for the Eastern District of Pennsylvania, be, and he is hereby assigned to sit in above case in order to make a full court.

Per Curiam.

Buffington, Circuit Judge.

[File endorsement omitted.]

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT, MARCH TERM, 1923

No. 2946 (List No. 7)

FLORENCE F. DALE, Petitioner,

vs.

CENTRE COUNTY BANKING CO. et al., Bankrupts, Respondents

ORDER ASSIGNING JUDGE—Filed March 7, 1923

Petition from the District Court of the United States for the Middle District of Pennsylvania

And now, to-wit this seventh day of March A. D. 1923, it is ordered that Hon. Charles L. McKeehan, District Judge for the Eastern District of Pennsylvania, be, and he is hereby assigned to sit in above case in order to make a full court.

Per Curiam.

Buffington, Circuit Judge.

[File endorsement omitted.]

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT, MARCH TERM, 1923

No. 2971

ANDREW BREEZE, Petitioner,

vs.

CENTRE COUNTY BANKING Co. et al., Bankrupts, Respondents

ORDER ASSIGNING JUDGE—Filed March 7, 1923

Petition from the District Court of the United States for the Middle District of Pennsylvania

And now, to-wit this seventh day of March A. D. 1923, it is ordered that Hon. Charles L. McKeehan, District Judge for the Eastern District of Pennsylvania, be, and he is hereby assigned to sit in above case in order to make a full court.

Per Curiam.

Buffington, Circuit Judge.

[File endorsement omitted.]

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 2945, March Term, 1923

GEORGE R. MEEK

vs.

CENTRE COUNTY BANKING Co. et al.

No. 2946, March Term, 1923

FLORENCE F. DALE

vs.

CENTRE COUNTY BANKING Co. et al.

No. 2971, March Term, 1923

ANDREW BREEZE

vs.

CENTRE COUNTY BANKING Co. et al.

ARGUMENT AND SUBMISSION

And afterwards, to wit, on the 7th day of March, 1923, come the parties aforesaid by their counsel aforesaid, and this case being called

for argument sur pleadings and briefs, before the Honorable Joseph Buffington, Honorable J. Warren Davis, Circuit Judge, and Honorable Charles L. McKeehan, District Judges, and the Court not being fully advised in the premises, takes further time for the consideration thereof,

And afterwards, to wit, on the 20th day of August, 1923 come the parties aforesaid by their counsel aforesaid, and the Court, now being fully advised in the premises, renders the following decision:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 2945, March Term, 1923

GEORGE R. MEEK

vs.

CENTRE COUNTY BANKING COMPANY, a Partnership, and JOHN M. SHUBERT, Individually, Bankrupts

No. 2946, March Term, 1923

FLORENCE F. DALE

vs.

CENTRE COUNTY BANKING COMPANY, a Partnership, and JOHN M. SHUGERT, Individually, Bankrupts

No. 2971, March Term, 1923

ANDREW BREEZE

vs.

CENTRE COUNTY BANKING COMPANY, a Partnership, and JOHN M. SHUGERT, Individually, Bankrupts

Petitions for Review from the District Court of the United States for the Middle District of Pennsylvania

Before Buffington and Davis, Circuit Judges, and McKeehan, District Judge

OPINION—Filed August 20, 1923

DAVIS, Circuit Judge: All three of these cases were argued together. The same questions arise in each and they will be disposed of in one opinion.

John M. Shugert, George R. Meek, Mary C. Harris, Florence F. Dale, Andrew Breeze and Lavina Katherine Harris conducted a banking business at Bellefonte, Pa., under the firm name of Centre

County Banking Company: Lavina Katherine Harris died and while her estate was being administered in the Probate Court of Center County, John M. Shugert filed a petition in his own name and in the name of the partnership in which he alleged that he individually, the partnership and his partners were all insolvent and prayed that he, the partnership and the partners, individually, be adjudged bankrupts. After the service of subpœnas on all the partners personally except Andrew Breeze who was served by publication, the appellants filed petitions praying the court to dismiss Shugert's petition in bankruptcy for two reasons: First, Shugert was without authority, without consent of his partners, to have the partnership and the individual members thereof adjudicated bankrupts; and second, the partnership cannot be adjudicated a bankrupt because the estate of Lavina Katherine Harris, constituting part of the partnership estate, was being administered in the Probate Court of Center County. Authority of one partner to institute proceedings in bankruptcy involving his partners individually and the partnership was conferred by section 36 of the Act of 1867, but this authority, they contend, was omitted from the Act of 1898 and this omission shows that Congress intended to repeal the authority granted in that section. But section 5a and c, of the Act of 1898 provides that:

(a) "A partnership, during the continuation of the partnership business, or after its dissolution and before the final settlement thereof, may be adjudged a bankrupt.

(c) The court of bankruptcy which has jurisdiction of one of the partners may have jurisdiction of all the partners and of the administration of the partnership and individual property."

General Order No. VIII provides that:

"Any member of a partnership, who refuses to join in a petition to have the partnership declared bankrupt, shall be entitled to resist the prayer of the petition in the same menner as if the petition had been filed by a creditor of the partnership, and notice of the filing of the petition shall be given to him in the same manner as provided by law and by these rules in the case of a debtor petitioned against."

Appellants contend that the above section and General Order refer to involuntary and not to voluntary petitions in bankruptcy. General Order No. VIII was promulgated by the Supreme Court pursuant to section 30 of the Act of 1898 and had the force of law. This section provides that:

"All necessary rules, forms, and orders as to procedure and for carrying this act into force and effect shall be prescribed, and may be amended from time to time, by the Supreme Court of the United States."

So far as the language of section 5 provides, the adjudication against a partnership may be based on either a voluntary or involuntary

petition. The appellants admit that an adjudication may be based on an involuntary petition, but not on a voluntary petition filed by one of the partners. Under the authority of section 36 of the Act of 1867 a voluntary petition might be filed by "anyone" of the partners or by "any creditor" of the partnership. There is nothing in the language of section 5 of the Act of 1898 restricting adjudications to involuntary petitions. It simply provides that "a partnership * * * may be adjudged a bankrupt." Did not Congress in section 5 of the later Act tersely include everything contained in section 36 of the earlier Act? In the absence of any provision in the Act of 1898 to the contrary, we think the true interpretation requires us to hold that it did. If the Act of 1898 had provided that "a partnership * * * may be adjudged a bankrupt" on the petition of "any creditor", this would have indicated that Congress intended to deny to an individual partner authority to file a petition against the partnership. In that event, the argument of counsel that expressio unius est exclusio alterius would have force. Under the broad authority conferred by section 5 of the Act of 1898 a petition may be filed by "anyone" of the partners, and by "any creditor." The legal maxim on which counsel's argument on this phase of the case is based has no application to the facts before us.

General Order No. VIII provides that: "Any member of a partnership who refuses to join in the petition * * * shall be entitled to resist the prayer" etc. By the words "join in," the Supreme Court had in mind a voluntary petition filed by a member of the partnership and this petition is distinguished from a petition filed by a "creditor" in which a member of the partnership would not "join in." Judge Lowell held in the case of In re Forbes et al., 128 Fed. 137, 140, that a petition by one partner dispenses with the necessity of proof of any other act of bankruptcy by the partnership and if the other partners do not "join in" the petition, they may resist it just as they might have done if "any creditor" of the partnership had filed an involuntary petition. The opinion received the commendation of the Supreme Court. Francis v. McNeal, 228 U. S. 695. Where a partnership is composed of two members and one of the members is adjudicated a bankrupt but the other is not, the bankruptcy court may draw to itself and administer the estate of the other to an extent sufficient to pay the debts of the partnership adjudged to be bankrupt. Armstrong v. Fisher, et al., 224 Fed. 97; Francis v. McNeal, 186 Fed. 481, affirmed in 228 U. S. 695; Yungbluth v. Slipper et al., 185 Fed. 773.

Does the fact that the estate of Lavina Katherine Harris is being Administered in the Probate Court of Center County, Pennsylvania, prevent adjudication and administration of the partnership in bankruptcy? "There is an apparent conflict of authority upon this question." Collier on Bankruptcy (12 Ed.) 175. The death of one of the partners does not in any wise affect the insolvency of the partnership. Insolvency does not depend upon whether the property liable to creditors is in the hands of a living surviving partner or in the hands of the administrator of his estate. Proceedings against an insolvent partnership and insolvent partners should not

be made impossible because one of the partners is dead. Vaccaro et al. v. Security Bank of Memphis et al., 130 Fed. 436, 442. The contrary view is based on the proposition that the court which first secures possession of the funds shall administer them, but there is no need whatever of conflict over the property of the decedent's estate. Partnership assets are liable primarily for partnership debts. After the individual assets of the estate of Lavina Katherine Harris are administered by the Probate Court if there is a surplus to be applied to the partnership debts, it will be turned over to the bankruptcy court. In re Stem & Co., 127 Fed. 547. The order appealed from is

Affirmed.

[File endorsement omitted.]

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT, MARCH TERM, 1923

No. 2945 (List No. 6)

GEORGE R. MEEK, Petitioner,

vs.

CENTRE COUNTY BANKING CO. et al., Bankrupts, Respondents

Appeal from the District Court of the United States for the Middle District of Pennsylvania

JUDGMENT—Filed August 20, 1923

This cause came on to be heard on the transcript of record from the District Court of the United States for the Middle District of Pennsylvania was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this Court, that the decree of the said District Court in this cause be, and the same is hereby affirmed, with costs.

Philadelphia, August 20, 1923.

J. Warren Davis, Circuit Judge.

[File endorsement omitted.]

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT, MARCH TERM, 1923

No. 2946 (List No. 7)

FLORENCE F. DALE, Petitioner,

vs.

CENTRE COUNTY BANKING Co. et al., Bankrupts, Respondents

Appeal from the District Court of the United States for the Middle District of Pennsylvania

JUDGMENT—Filed August 20, 1923

This cause came on to be heard on the transcript of record from the District Court of the United States for the Middle District of Pennsylvania and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this Court, that the decree of the said District Court in this cause be, and the same is hereby affirmed, with costs.

Philadelphia, August 20, 1923.

J. Warren Davis, Circuit Judge.

[File endorsement omitted.]

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT, OCTOBER TERM, 1923.

No. 2971 (List No. 8)

ANDREW BREEZE, Petitioner,

vs.

CENTRE COUNTY BANKING Co. et al., Bankrupts, Respondents

Appeal from the District Court of the United States for the Middle District of Pennsylvania

JUDGMENT—Filed August 20, 1923

This cause came on to be heard on the transcript of record from the District Court of the United States for the Middle District of Pennsylvania was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this Court, that the decree of the said District Court in this cause be, and the same is hereby affirmed, with costs.

Philadelphia, August 20, 1923.

J. Warren Davis, Circuit Judge.

[File endorsement omitted.]

UNITED STATES OF AMERICA,
Eastern District of Pennsylvania,
Third Judicial Circuit, set:

I, Saunders Lewis, Jr., Clerk of the United States Circuit Court of Appeals, for the Third Circuit, do hereby certify the foregoing to be a true and faithful copy of the original record and proceedings in this Court in the cases of:

Geo. R. Meek vs. Centre County Banking Co., et al., No. 2945;
Florence F. Dale vs. " " " " " " No. 2946;
Andrew Breeze vs. " " " " " " No. 2971,

on file, and now remaining among the records of the said Court, in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said Court, at Philadelphia, this 26th day of September, in the year of our Lord one thousand nine hundred and twenty-three, and of the Independence of the United States the one hundred and forty-eighth.

Saunders Lewis, Jr., Clerk of the U. S. Circuit Court of Appeals, Third Circuit. (Seal of the United States Circuit Court of Appeals, Third Circuit.)

UNITED STATES OF AMERICA, ss:

WRIT OF CERTIORARI AND RETURN—Filed December 31, 1923

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the United States Circuit Court of Appeals for the Third Circuit, Greeting:

Being informed that there is now pending before you a suit in which George R. Meek is petitioner, and Centre County Banking Company, Partnership, and John M. Shugert, Individually, Bankrupts, are respondents, No. 2945, which suit was removed into the said Circuit Court of Appeals by virtue of a petition to review an order of the District Court of the United States for the Middle District of Pennsylcania, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed into the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable William H. Taft, Chief Justice of the United States, the twenty-sixth day of October, in the year of our Lord one thousand nine hundred and twenty-three.

Wm. R. Stansbury, Clerk of the Supreme Court of the United States.

[File endorsement omitted.]

IN THE SUPREME COURT OF THE UNITED STATES

[Title omitted]

STIPULATION

It is hereby stipulated that the transcript of the record in the above stated case now on file in the Supreme Court of the United States shall stand as the return to the writ of certiorari allowed by the Supreme Court October 22, 1923.

M. C. Rhone, Ellis L. Orvis, Harry Keller, Attorneys for Petitioner. N. B. Spangler, Attorney for Creditors Committee; S. D. Gettig, Attorney for John M. Spangler, Attorneys for Respondents.

[File endorsement omitted.]

UNITED STATES OF AMERICA,
Eastern District of Pennsylvania,
Third Judicial Circuit, set:

I, Saunders Lewis, Jr., Clerk of the United States Circuit Court of Appeals, for the Third Circuit, do hereby certify the foregoing to be a true and faithful copy of the original stipulation of counsel for return to writ of certiorari in the case of George R. Meek, Petitioner, vs. Centre County Banking Co. et al., Bankrupts, Respondents, No. 2945, on file, and now remaining among the records of the said Court, in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said Court, at Philadelphia, this 29th day of December in the year of our Lord one thousand nine hundred and twenty-three and of the Independence of the United States the one hundred and forty-eighth.

Saunders Lewis, Jr., Clerk of the U. S. Circuit Court of Appeals, Third Circuit. (Seal of the United States Circuit Court of Appeals, Third Circuit.)

[File endorsement omitted.]

WRIT OF CERTIORARI AND RETURN—Filed December 31, 1923

UNITED STATES OF AMERICA, ss:

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the United States Circuit Court of Appeals for the Third Circuit, Greeting:

Being informed that there is now pending before you a suit in which Florence F. Dale is petitioner, and Centre County Banking

Company, a Partnership, and John M. Shugert, Individually, Bankrupts, are respondents, No. 2946, which suit was removed into the said Circuit Court of Appeals by virtue of a petition to review an order of the District Court of the United States for the Middle District of Pennsylvania, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed into the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable William H. Taft, Chief Justice of the United States, the twenty-sixth day of October, in the year of our Lord one thousand nine hundred and twenty-three.

Wm. R. Stansbury, Clerk of the Supreme Court of the United States.

[File endorsement omitted.]

IN THE SUPREME COURT OF THE UNITED STATES

[Title omitted]

STIPULATION

It is hereby stipulated that the transcript of the record in the above stated case now on file in the Supreme Court of the United States shall stand as the return to the writ of certiorari allowed by the Supreme Court October 2, 1923.

M. C. Rhone, R. L. Bigelow, Ellis L. Orvis, Harry Keller, Attorneys for Petitioner. N. B. Spangler, Attorney for Creditors' Committee; S. D. Gettig, Attorney for John M. Spangler, Attorneys for Respondents.

[File endorsement omitted.]

UNITED STATES OF AMERICA,
Eastern District of Pennsylvania,
Third Judicial Circuit, set:

I, Saunders Lewis, Jr., Clerk of the United States Circuit Court of Appeals, for the Third Circuit, do hereby certify the foregoing to be a true and faithful copy of the original stipulation of counsel for return to writ of certiorari in the case of Florence F. Dale, Petitioner, vs. Centre County Banking Co., et al., Bankrupts, Respondents, No. 2946, on file, and now remaining among the records of the said Court, in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said Court, at Philadelphia, this 29th day of December, in the year of our Lord one thousand nine hundred and twenty-three and of the Independence of the United States the one hundred and forty-eighth.

Saunders Lewis, Jr., Clerk of the U. S. Circuit Court of Appeals, Third Circuit. (Seal of the United States Circuit Court of Appeals, Third Circuit.)

[File endorsement omitted.]

WRIT OF CERTIORARI AND RETURN—Filed December 31, 1923

UNITED STATES OF AMERICA, ss:

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the United States Circuit Court of Appeals for the Third Circuit, Greeting:

Being informed that there is now pending before you a suit in which Andrew Breeze is petitioner, and Centre County Banking Company, a Partnership, and John M. Shugert, Individually, Bankrupts, are respondents, No. 2971, which suit was removed into the said Circuit Court of Appeals by virtue of a petition to review an order of the District Court of the United States for the Middle District of Pennsylvania, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed into the Supreme Court of the United States, Do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable William H. Taft, Chief Justice of the United States, the twenty-sixth day of October, in the year of our Lord one thousand nine hundred and twenty-three.

Wm. R. Stansbury, Clerk of the Supreme Court of the United States.

[File endorsement omitted.]

IN THE SUPREME COURT OF THE UNITED STATES

[Title omitted]

STIPULATION

It is hereby stipulated that the transcript of the record in the above stated case now on file in the Supreme Court of the United States shall stand as the return to the writ of certiorari allowed by the Supreme Court October 22, 1923.

M. C. Rhone, Ellis L. Orvis, Harry Keller, Attorneys for Petitioner. N. B. Spangler, Attorney for Creditors' Committee; S. D. Gettig, Attorney for John M. Spangler, Attorneys for Respondents.

[File endorsement omitted.]

UNITED STATES OF AMERICA,
Eastern District of Pennsylvania,
Third Judicial Circuit, set:

I, Saunders Lewis, Jr., Clerk of the United States Circuit Court of Appeals, for the Third Circuit, do hereby certify the foregoing to be a true and faithful copy of the original stipulation of counsel for return to writ of certiorari in the case of Andrew Breeze, Petitioner, vs. Centre County Banking Co., et al., Bankrupts, Respondents, No. 2971, on file, and now remaining among the records of the said Court, in my office.

In testimony whereof, I have hereunto subscribed by name and affixed the seal of the said Court, at Philadelphia, this 29th day of December, in the year of our Lord one thousand nine hundred and twenty-three and of the Independence of the United States the one hundred and forty-eighth.

Saunders Lewis, Jr., Clerk of the U. S. Circuit Court of Appeals, Third Circuit. (Seal of the United States Circuit Court of Appeals, Third Circuit.)

[File endorsement omitted.]